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CONVEYANCER'S NOTEBOOK.

War Damage Act amendment.—The War Damage (Amendment) Act, 1943, makes one important, though short, amendment to the 1941 Act and supplies some omissions concerning rentcharges.

The short amendment is that in determining whether a payment shall be a cost of works payment or a value payment the relevant prices for the purpose are to be those current on March 31, 1939. The amendment is to section 4 (1) and the Third Schedule, paragraph 2 of the 1941 Act, which are very conveniently printed as amended in the Schedule to the 1943 Act. The net effect appears to be that if the cost of reinstating the buildings at the prices current on March 31, 1939, would be likely to be more than the difference between the value of the property reinstated and the value of the property sold without reinstatement (both taken on sales as at March 31, 1939) then a value payment and not a cost of works payment will be made.

Planning.—The Town and Country Planning Bill as presented to Parliament has at least one great merit from the point of view of the property lawyer. It does not seem to involve him in any further complications in the investigation of title. One is almost inclined to style it the Town and Country Planning (Stop) Bill. It means that development cannot go on except with permission of the planning authority and even goes so far as to make the prohibition of the principal Act (the Town and Country Planning Act, 1932) more complete than before: see clause 2. On the other hand, it is important to notice that it is not necessary to compile a register for the purposes of a scheme under the Act: see clause 1 (2); thereby modifying section 7 of the 1932 Act. The absence of a register may be good, if it does mean that some more satisfactory method is being evolved for dealing with the right of property owners to know how their property is to be affected. But it is calamitous, if it means one step further into the jungle of statutory rules

and orders which the unfortunate subject is expected to know either by instinct or the lucky chance that he or his adviser has seen it in some paper or other.

Agriculture (Miscellaneous Provisions) Act.—As its name implies this Act is a mixed bag. Much of it is concerned with the question of drainage and extends the powers of creating drainage schemes and the acquisition of land for drainage works. But from such a topic it can turn to improvement of any lands subject to common rights of pasture (section 11) and the artificial insemination of cattle (section 17).

The power of the Committee under the Agricultural (Miscellaneous Provisions) Act, 1940, to continue in possession either by themselves or any person includes the power to do or authorise the doing of any work on that land incidental to the occupation thereof for agricultural purposes: section 13. The period of time under section 26 (1) of the 1940 Act is extended so as to exceed a period of four years but not a period of eight years: section 14 (1). Where a tenancy to which section 26 (1) applies has been terminated and a tenancy has been made *immediately* after the termination of the former tenancy, sub-section (1) applies to the new tenancy: section 14 (2).

Section 15 is a long section of some importance relating to relief to tenants for ploughing up permanent pasture under a direction given under the Defence Regulations where the tenant is liable under the contract of tenancy, any custom of the country or the law of waste. But it deprives a tenant of any claim to an away-going crop in respect of any greater acreage than that which would have been possible under the tenancy or custom of the country. On the other hand, a tenant will be entitled to compensation on the termination of his tenancy for complying with directions under the Defence Regulations in respect of any growing crops sown, or tillages or manuring carried out (otherwise than under the tenancy agreement or custom of the country) in like manner as if they had been crops sown (other than away-going crops) or tillages or manuring carried out in accordance with the agreement or custom.

Section 16 extends the power of the Minister compulsorily to acquire land in the same ownership as that acquired under the Agriculture Act, 1941, s. 9, for the purpose of securing satisfactory development and resale of any land.

Abstracts of title—registered land.—Attention should be drawn to the opinion of the Council of the Law Society expressed in the Society's *Gazette* for April, 1943. Under section 110 (1) of the Land Registration Act, 1925, a purchaser is entitled to an authority to inspect the register and *if required* with a copy or extract of the entries on the register and of the filed plan, though the purchaser must pay the cost of the copies if they are required and the purchase money does not exceed £1,000. The Council express the opinion that it is desirable that there should be

uniformity in the practice in compliance with this provision and that it would be achieved if the vendor's solicitors would always obtain from the Registry official copies of the entries on the register and supply them to the purchaser's solicitor on exchange of contracts. The Council expresses the opinion that if this course is followed the expense will always fall on the vendor, apart, of course, from any express stipulation in the contract. The expense will be small (1s. 6d. per copy) so far as the entries are concerned. So far as the plan is concerned it is, of course, vital that it should be an exact copy and this is most easily ensured by purchasing a copy from the Registry (price 1s.).

Apart from any question of uniform practice there is much to commend this suggestion. Particularly it should be noted that an office copy is admissible as evidence of title in the same manner as the Land Certificate: Land Registration Rules, r. 264. Consequently, if the purchaser's solicitor has an office copy it is not necessary to inspect the Land Certificate, as is now a common practice, and if he also uses an official search it will not normally be necessary to inspect the register, although that it is the only conclusive evidence of title. It would seem that a deposit by way of security of a Land Certificate, though it would create a lien, would not affect a purchaser unless it was protected by notice on the register which would, of course, appear in the office copy of the entries. Whether the inspection of the Land Certificate or the use of an office copy in lieu of actual inspection is wholly satisfactory is too long for this note to discuss (see III K. & E., pp. 339–40) but the view taken by the Registry officials is that it is. In any event the purchaser is always entitled to an authority to search and this is in fact necessary to obtain the official search.

This recommendation of the Council is confined to deducing title under the Land Registration Act, s. 110 (1). Under sub-section 2 a purchaser is also entitled to an abstract of title to all matters on which the register is not conclusive, so, for example, if the title is possessory the purchaser is still entitled to an ordinary abstract of title down to the date of first registration. Again, he is entitled to an abstract of any subsisting rights and interests appurtenant to the land in respect of which the register is not conclusive. These are normally overriding interests and in fact this provision, which can be, but rarely is, excluded by express provision, is frequently disregarded. So, for example, where a right of way or drainage is created by a registered disposition, whether or not a note appears on the register, it would seem that the disposition should be properly abstracted and it should not be left to the purchaser to act simply upon the note appearing on the register. Where there is no note the necessity for a proper abstract is obvious. Thirdly, by section 110 (1) a purchaser is also entitled, notwithstanding any contrary stipulation, to copies or abstracts of any documents or any part thereof noted on the register so far as they respectively affect the land subject to the contract, except incumbrances to be discharged or overridden by the transfer. This seems to involve all leases noted on the register and all documents such as registered dispositions creating restrictive covenants or other charges which continue to bind the land in the hands of

the purchaser. It is not sufficient, in our opinion, to require the purchaser to rely upon such entry as may appear in the note on the register, but to supply him with all necessary details including, presumably, the parties to the instrument which he would get in unregistered conveyancing.

The recommendation of the Council does not seem to deal with these matters which may in a sense be ancillary to the main title, namely, the entries on the register. Clearly in small transactions the requirements of a full abstract of all the matters mentioned may be rather more expensive and the vendor may reasonably regard himself as entitled to insist upon payment for the additional abstract. In fact the precise character of abstract to be delivered under the contract should always be considered at the time of draft contract and it may equally be convenient to deal with the matter of expense specifically.

Advertisement under section 27 of the Trustee Act, 1925.—Attention should also be drawn to the announcement in the Law Society's *Gazette* for April of the form to be taken by advertisements in the London *Gazette* based on the recommendations of the Council. This form sets out the particulars to be submitted for insertion and the advertisement must be signed or attested by a solicitor.

We reproduce the form hereunder in case any subscriber may have missed it:—

PARTICULARS OF ADVERTISEMENT UNDER S. 27 OF THE TRUSTEE ACT, 1925.

Name of Deceased .....

Address .....

Description .....

Date of Death .....

Name(s) and address(es) of person(s) to whom notices of claim are to be given. .....
.....

Name(s) of Executor(s) .....

Date on or before which notices of claims must be given. .....

Remittance ..... *shillings* ..... *pence.*

Enclosed by Postal Order / Cheque .....

To: The London Gazette.

Signed .....

Address .....

Capacity .....

Note.—Advertisements will not be inserted unless signed or attested by a Solicitor of the Supreme Court.

SOME ASPECTS OF CONSTRUCTION.

By Bertram B. Benas, B.A., LL.B., Barrister-at-Law.

The citations of authorities for *dicta* often recall and give legal immortality to decisions in varying degrees of distance from the case on whose behalf the citation is made. Perhaps the classic illustration is *The Moorcock*, 14 P. D. 64, which has taken many voyages from its original harbour of the wharfingers and been dry-docked in the port of real property exhibiting through the *dictum* of Bowen, L.J., at p. 68, a vital point as to implied terms in the contract of Vendor and Purchaser. As observed in *Chitty on Contracts* (19th ed.), at pp. 117, 118: "The principle laid down in these words" (*i.e.*, the *dictum* of Bowen, L.J., above referred to) "has been approved many times and applied to the construction of contracts too numerous and various to be mentioned." *Re Morgan, Morgan* v. *Morgan*, [1942] 2 A. E. R. 30, as it was styled in the Court of Appeal, appearing as *Perrin and others* v. *Morgan and others* in the House of Lords [1943] 1 A. E. R. 187, may not attain the same degree of amphibiousness as *The Moorcock* (*supra*) but there is every likelihood of the case being cited far more often for the wealth of its *dicta* than for a ruling as to the testamentary meaning of "money", since although it may be sufficiently decisive to govern the meaning of the term in wills where there are gifts of "moneys", or perhaps "money", of so sweeping a kind as in the case in question there are *dicta* therein which will cover the construction of wills in general, and so its citation is capable of requisition far beyond the very numerous cases in which gifts of "all my money" or "all my moneys" occur. The learned reviewer of the seventh edition of *Jarman on Wills* in 46 L. Q. R. 369 observed (at p. 370): "To the making of decisions on the construction of wills there is no end. We cannot part with this work without remarking that the table of cases contains something over ten thousand decisions. We wonder what proportion is due to the six-penny Will form, and what to such elegancies of the law as section 33 of the Wills Act and the *construction placed by the Courts upon gifts of money*." (Italics by the present writer.)

The rule relating to testamentary gifts of money is clearly stated and expounded by Lord Greene, M.R., in the Court of Appeal [1942] 2 A. E. R., at p. 32. The Master of the Rolls observed that "The rule is, and it has been laid down on many occasions, that the word 'money' in a will must be construed in what is called its strict sense, unless there is a 'context' which permits of an extended meaning being given to it. The strict sense of 'money' curiously enough—and this is one of the anomalies about this rule—is a sense which has been invented by the Courts, and invented, I think, partly in order to get rid of the rigours of the rule which would have existed if the word 'money' had been confined to actual cash—which, no doubt, was the original meaning. That was felt by the Courts to be going too far, so they have invented a special category which they have called 'money in the strict sense' which includes money not in any strict sense, because it includes choses

in action, such as moneys on drawing account at a bank. The category, however, is closed, and we cannot extend the language unless there is a context permitting such a course. In the present case I am afraid that I cannot find such a context." The issues were sharply defined by Lord Thankerton in the House of Lords [1943] 1 A. E. R., at p. 195, with the precision which those trained in Scots law so helpfully apply to the solution of problems in the Law of England. His Lordship observed: "Two questions arise in the appeal; the first relates to the rule of construction, and is whether the rule, as applied by the Courts in the decisions referred to, is a wrong rule altogether, or is a sound rule, which has been wrongly applied. This appears to be the first time that this House has had occasion to consider this rule, and I agree with the view, in which I gather all your Lordships concur, that the rule has been much misapplied. The second question is whether, assuming the rule to be sound, there is a sufficient context in the present case to justify a wider construction of the words 'all moneys of which I die possessed'." At long last then, the Lords have tackled the problems, but although there was unanimity in allowing the appeal, there was manifest difference of opinion in respect of the answers to the two questions propounded by Lord Thankerton. The Lord Chancellor, Lord Atkin, and Lord Thankerton disfavoured the rule imposing a primary presumption as to the meaning of money in a will, while Lord Russell of Killowen and Lord Romer upheld it. Strictly, therefore, for the first three named the second question of Lord Thankerton did not arise, although Lord Thankerton dealt with it for the purpose of showing how if the rule were sound it was to be applied to the present case. The last two named Lords of Appeal favoured the rule but agreed that it had at times in the past been misapplied. Perhaps the crucial difference in the approach by the Court of Appeal and the House of Lords to the problems involved may be found in the fact that in interpreting the law the Court of Appeal adopted the rule, and in considering the context of the will, envisaged "context" as comprehending the actual terms of the will and nothing *dehors* its terms. The opinion of Lord Romer, with which Lord Russell of Killowen expressly stated he agreed both in reasoning and conclusion, was based on "an examination of the language of the whole will, when read in the light of the surrounding circumstances" (p. 197). Context, then, to Lord Russell and Lord Romer went further than the ambit envisaged by the Master of the Rolls, while to the Lord Chancellor, Lord Atkin, and Lord Thankerton the wider meaning of context was all in all because they felt unfettered by any rule imposing a primary meaning whatever. The House of Lords, save in so far that it is the final appellate jurisdiction, does not carry the principle substantially further than the following observations of Kay, J., in *Re Cadogan, Cadogan* v. *Pelagi*, 25 Ch. D. 154, at p. 157, not cited in the Court of Appeal in the present case, although on appeal therefrom, but even then not in respect of those observations which, it is submitted, are vital and decisive: "There should be no absolute technical meaning given to such a word as 'money' in a will, but its meaning in every case must depend upon the context if there is any which can explain it,

and upon those surrounding circumstances, which the Court is bound to take into consideration in determining the construction." His Lordship thus differentiated "context" and "surrounding circumstances". Lord Russell of Killowen and Lord Romer appear to have comprehended the latter within the former. The Lord Chancellor did not disavow the description of the rule as a "blot upon our jurisprudence", applied thereto by the Master of the Rolls [1942] 2 A. E. R. 30, at p. 32, and in effect indorsed it, while Lord Atkin emphatically affirmed the description [1943] 1 A. E. R. p. 195. Lord Thankerton could not "agree that any such rule can become stereotyped in perpetuity". It may be respectfully questioned whether we have heard the last of "all my moneys" or "all my money" in Courts of construction, although the effect of the decision may cause us to hear not so much as to these awkward phrases. In view of the varying nature of the opinions of the Lords of Appeal, *Perrin* v. *Morgan* has lost something in conclusiveness, but its wealth of reasoning and *dicta* remains unimpaired. Lord Thankerton's opinion is characterised by its emphasis upon the consideration of the question of terminology in relation to current use—"the testator's use of the word must be referable to the ordinary uses of the English language at the time when he was making his will" (at p. 196). A similar standpoint was taken up when motor cars were gradually taking the place of "horses and carriages". In 1916 a gift of "all my horses, carriages . . ." did not pass a motor car thereby, although it passed as a gift of "furniture and all other articles of personal domestic or household use". (See *Re White, White* v. *White*, [1916] 1 Ch. 172; *Re Dennis, Dennis* v. *Dennis*, 24 T. L. R. 499, eight years previously, being distinguishable as the will only referred to "carriages", no mention being made of horses, and a motor car was thus held to be within the terms of the will which referred to "carriages in or about or belonging to the" testator's house.) By 1923, however, it was possible for the Court to decide that a gift of "all my horses and all my carriages" passed a motor which at the date of the will the testatrix did not possess. (See *Re Sivewright, Law* v. *Fenwick*, 128 L. T. 416.) Evolutionary changes in social conditions are, of course, regularly reflected in statutory amendments. In Sir Arthur Underhill's Introduction to his annotated edition of the Settled Land Acts, 1882 and 1884 (one of his earlier text-books) the learned conveyancer showed how various statutes progressively increased the powers to make permanent improvements to settled land, the Improvement of Land Act, 1864, representing the largest increase until the 1882 Act which represented "a considerable extension". The 1925 Act further illustrates the phenomenon. In Part III of the Third Schedule installations of gas and electricity first appear as within the scope of authorised "improvements". What "improvements" signified to the generation of 1864 was not the same to the generations of 1882 and 1925. (See thereon Arnold's *The Settled Land Acts*, p. 93). Both ideas and language evolve, and observations both in the Court of Appeal and the House of Lords afford support to the view that this must be borne in mind in the construction of a will.

Perrin v. *Morgan* is full of *dicta* which are likely to be enlisted in cases of construction generally. The case promised this characteristic in the Court of Appeal. The Master of the Rolls observed [1942] 2 A. E. R., at p. 32, that "one of the vices of a rule such as this is that it induces a tendency . . . to endeavour by some very subtle distinctions, and sometimes over-subtle distinctions, to construe a will in such a way as to get out of the rule". The Lord Chancellor said ([1943] 1 A. E. R., at p. 190): "In the case of an ordinary English word . . . which is not always employed in the same sense, I can see no possible justification for fixing upon it, as the result of a series of judicial decisions about a series of different wills, a cast-iron meaning, with the result that this special meaning must be presumed to be the meaning of every testator in every case unless the contrary is shown." Again at p. 191 he observed: "It seems to me a little unfortunate that so many of such cases should find their way into the books, for in most instances the duty of a Judge is not to regard previous decisions as constituting a sort of legal dictionary to be consulted and remorselessly applied whatever the testator may have intended, but to construe the particular document so as to arrive at the testator's real meaning according to its actual language and circumstances." This observation followed an emphatic protest by the Lord Chancellor in the following terms (*ibid.*): "I protest against the idea that, in interpreting the language of a will, there can be some fixed meaning of the word 'money' which the Courts must adopt as being the 'legal' meaning as opposed to the 'popular' meaning. The proper meaning is the correct meaning in the case of the particular will, and there is no necessary opposition between that meaning and the popular meaning. The duty of the Court in the case of an ordinary English word which has several quite usual meanings which differ from one another, is not to assume that one of several meanings holds the field as the correct meaning until it is ousted by some other meaning regarded as 'non-legal', but to ascertain without prejudice as between various usual meanings which is the correct interpretation of the particular document." Lord Atkin observed (*ibid.*, p. 194): "I cannot agree that the Court is precluded from looking outside the terms of the will. No will can be analysed *in vacuo*: there are material surroundings . . . in every case: and they have to be taken into account. The sole object is, of course, to ascertain from the will the testator's intentions. The result of your Lordships' decision will be to relieve Judges in the future from the thraldom, often I think self-imposed, of judgments in other cases believed to constrain them to give a meaning to wills which they know to be contrary to the testator's intention." Lord Russell of Killowen observed (*ibid.*, p. 197): "The meaning of the word 'money' when used by a testator (whether *inops consilii* or himself a skilled conveyancer) is not restricted by any hard and fast rule, but depends upon the context in which it occurs, properly construed in the light of all relevant facts." Lord Romer observed (pp. 197—198): "The rules of construction . . . should be regarded as a dictionary by which all parties, including the Courts, are bound. But the Courts should not have recourse to this dictionary for the purpose of construing a word or a phrase until it has ascertained from an examin-

ation of the language of the whole will, when read in the light of the surrounding circumstances, whether the testator has indicated his intention of using the word or the phrase in other than its dictionary meaning; whether, in other words, to use another familiar expression, the testator has been his own dictionary . . . I have noticed in some of the reported cases on wills a tendency on the part of the Court to pay more attention to the rules of construction than to the language of the testator." We are certain to hear these observations quoted time and again in our Courts of construction, so that even if *Perrin* v. *Morgan* were to have blocked "money" coming again before the Courts (which is not admitted), the case will resound by reason of its *dicta*. The text-writers anticipated some of these observations. For instance, in the original preface to *Hawkins on Wills*, the learned author, referring to the older rules of construction, said that they were "some of very ancient date, not a few very inconvenient in their operation, and not seldom traceable to a misconception of cases on which they originally rested" (p. iv). "A certain want of congruity is perhaps unavoidable in a system of construction elaborated by a succession of Judges, some inclining to the *grammatical* or literal, others to the *logical*, or inferential, interpretation of testamentary instruments" (*ibid.*). "There is no subject on which isolated cases and statements of cases are so misleading as in the construction of wills" (*ibid.*, p. vi). The preface to Underhill and Strahan on *Interpretation of Wills and Settlements* (2nd ed.) (p. viii) contains the following statement: "The principles which former Judges have enunciated for arriving at a conclusion as to the intention are undoubtedly of great value. Not that they must be used slavishly. The true way is, doubtless, to form an opinion apart from cases, and then to see whether these cases necessitate a modification of that opinion" (citing *Re Blanton*, *Lowe* v. *Cooke*, [1891] W. N. 54). *Perrin* v. *Morgan* is a milestone on the long road of testamentary construction, and construction generally. In a note on the case as decided in the Court of Appeal contributed by the present writer to the *Modern Law Review* (vi Mod. L. R. 86, at p. 87), reference is made to the fact that the rule dealt with in the case "went back as far as 1725 (*Shelmer's Case*, Gilb. Ch. 200), which case evoked the most interesting observations of" the Master of the Rolls "in respect of the relationship between 'Law and Opinion', to borrow Dicey's memorable phrase. His Lordship observed, 'It may be that the rule was in operation earlier; but in those days social habits were very different from what they are now. Instruments in the modern sense did not exist then, and the number of people who had money in the funds in those days was comparatively small'." Money, then, meant something different from money to-day and he would be bold who would envisage what money may mean in the future. *Perrin* v. *Morgan* has both social as well as legal significance and is thus a typical contribution to and a constituent of legal history. The *dicta* for their practical utility will be perennial even if other cases on "money" come their way.

OPTIONS TO PURCHASE.

By E. H. BODKIN, Barrister-at-Law.

The recent decision of the House of Lords in *Skelton* v. *Younghouse*, [1942] A. C. 571, that the question of the assignability of an option to purchase part of the testator's property conferred by his will is purely one of construction of the will, and that there is no presumption either in favour of or against assignability, is perhaps hardly conducive to certainty of interpretation; and it will probably compel application to the Court in the majority of cases where the testator, owing to his having been his own lawyer or otherwise, has omitted the elementary precaution of expressly providing either that the option shall be personal to the donee or exercisable by his executors, administrators and assigns.

The nature of an option to purchase conferred by will was considered by the Privy Council in *Wright* v. *Morgan*, [1926] A. C. 788. Viscount Dunedin, who delivered the judgment of the Board, expressed the view that, though an option to purchase realty was in a sense the property of the donee, the quality of the property was not like the property of land or a chattel; it was only the right to enter into a contract. Consequently it could not be sold to a co-trustee, as the result would be to create a contract for sale between the assignee and the trustees, which would on general principles be invalid, though if the donee had himself completed the purchase of the property and then sold it to the co-trustee the transaction would have been good. Viscount Dunedin also made some general observations in regard to the assignability of such options. His Lordship said that speaking generally any vested interest was assignable unless there was something in the nature of the interest, or something in the words of the settlement which created the interest, which contradicted the nature of assignability and he did not doubt that the option in the case before the Board might have been assigned to a third person. This dictum was regarded by Luxmoore, L.J., in his dissenting judgment in *Skelton* v. *Younghouse*, *supra*, when that case came before the Court of Appeal (*sub nom. Re Sykes*, *Younghouse* v. *Sykes*) as laying down a general principle of construction applicable to options, though the question was in every case ultimately dependent on the language of the particular will. In the House of Lords, however, Viscount Maugham did not think that Viscount Dunedin so intended, and he pointed out that the words "vested interest" generally implied in English law that the interest was not subject to a condition. He saw nothing to criticise in the general statement, but it was to be noted that the right in the case before the House was not a vested interest in the ordinary sense, and that the words "unless there is something in the nature of the interest", etc., qualified the general statement. Without saying anything on the question whether an option to purchase in a will conferred a vested interest before it was exercised, and, particularly if it was only exercisable at an uncertain time, his Lordship observed that the observation of Viscount Dunedin was in the nature

of an *obiter dictum* and the point was never argued before the Board, nor were *Re Cousins*, *Alexander* v. *Cross* (30 Ch. D. 203) and the other relevant cases cited.

The House of Lords not only rejected the presumption in favour of assignability, said to have been laid down by Viscount Dunedin, but also that in favour of non-assignability said to be deducible from the judgments in *Re Cousins*, *supra*, and stated in *Jarman on Wills* (7th edn., Vol. I, p. 73), by which Bennett, J., considered himself bound when the case came before him. The House was unanimously of opinion that *Re Cousins*, *supra*, laid down no such principle, and that the question was purely one of the construction of the particular will in the light of any surrounding circumstances which might properly be admissible. The opinions of the members of the House appear to proceed on the view that the nature of such an option is not of itself either personal or transmissible, but that an option of either kind may be created by appropriate language. That the creation of a vested interest is not the true test would seem clear; as Cotton, L.J., pointed out in *Re Cousins*, *supra*, a life estate may be vested and yet not devolve on the life tenant's representatives, while a contingent interest generally does so. Though the point is, in view of the decision of the House, probably academic, an option to purchase realty created by will, whether or not presently exercisable, will create a contingent interest in the land in the same cases as it would do so if created *inter vivos*. (See judgment of Jessel, M.R., in *London & South Western Ry.* v. *Gomm*, 20 Ch. D., at pp. 583–4.) Nor again, as pointed out by Brett, L.J., in *Re Cousins*, *supra*, is the question whether the option would pass to the donee's trustee in bankruptcy of any assistance in determining the assignability of the option. A mere right to select chattels conferred by will is, however, personal to the donee, unless some estate in them is also given to him. (See *Re Madge*, *Pridie* v. *Bellamy*, 44 T. L. R. 372, cited with approval by Viscount Maugham in *Skelton* v. *Younghouse*, *supra*.) The principle laid down by the House is of general application, and applies to an option whether it be presently exercisable or not; in the former case it may clearly be personal, while in the latter it may be transmissible. But though intention is the ultimate test, an intention that the option is to be transmissible may, it seems, be inferred from the nature of the property, and would be so inferred in the absence of any indication to the contrary in the case of an ordinary option to purchase shares, or to purchase realty which possessed no special element of value or convenience to the donee personally.

It is important to observe that the same result as that of giving an option may be attained by giving the property to the donee subject to his paying the purchase money to the estate; and if this course is adopted the devisee's interest will descend according to the nature of the property. (See *Re Sykes*, *supra*, [1941] Ch., at p. 7; cf. *Re Kirk*, *Kirk* v. *Kirk*, 21 Ch. D. 431.) Thus in the Irish case of *Belshaw* v. *Rollins*, [1904] 1 Ir. R. 284, the testator devised his farm to his wife for life or during her widowhood, and at her decease or remarriage or on her failing to pay the rent, he desired that his brother Arthur should "get the

entire of said dwellinghouse, outbuildings, garden, and land, etc., at £8 sterling per statute acre. If my brother Arthur will not take the land, etc., at £8 sterling per statute acre . . . they are then to be sold by public auction". Arthur predeceased the widow, having by his will given all his interest in the farm to his son. Porter, M.R., observed that *Re Cousins*, *supra*, turned exclusively on its particular facts, and further there was the radical and substantial difference between the two cases that in *Re Cousins*, *supra*, there was nothing given at all except an option to purchase, while in the case before him there was a positive devise or bequest of the property of the farm, etc., connected with the condition of paying £8 per acre. A gift of property on condition of paying a price for it was different from a mere option to purchase it. The condition of payment was a condition subsequent, that is subsequent to its vesting, because Arthur could not be called upon to pay during the lifetime of the tenant for life, as the choice was to be made when the estate fell in, but all the same till then the property was vested in him subject to that condition. The element of personal need or personal convenience on which *Re Cousins*, *supra*, depended was also absent. He held accordingly that the personal representatives of Arthur, who had, so far as he could do so by will, himself exercised the option, were entitled to exercise it.

Taylor v. *Cooper*, 10 Jur. (o.s.) 1078, was a somewhat similar case. There the testator devised leasehold premises held on long leases to his wife for life and after her death to the testator's executor, his heirs and assigns, on trust to grant an underlease for the residue of the term to his son, George Taylor, subject to similar covenants as were contained in the headlease. It was held that, although George had predeceased the widow, his executor was entitled to the underlease. The provision was regarded as a bequest of personal property to George, which would have failed had he predeceased the testator, but did not so fail by reason of his predeceasing the widow. It is to be observed that the will created an express trust in favour of George, though he was bound as a condition of taking the benefit to execute the underlease.

If, on the other hand, the property be devised to the beneficiary contingently upon his accepting it and paying the price and the condition is so expressed as to be a condition precedent, the position would be analogous to that under an option to purchase, and the assignability of the benefit would apparently depend upon the intention to be inferred from the will and the surrounding circumstances. (Cf. *Re Goodwin*, *Ainslie* v. *Goodwin*, [1924] 2 Ch. 26, where the condition of releasing the testator's estate from an annuity was held capable of being performed by the legatee's executors.) In *Radnor (Earl of)* v. *Shafto*, 11 Ves. 448, Lord Eldon in fact considered an option to purchase realty for a fixed sum or at a price to be fixed by the trustees would amount to a devise of the estate if the donee would accept it on those terms. He also considered that the right of acceptance would be personal to the donee, though if he did any act in his lifetime denoting that he accepted the benefit, even by his will, he would be treated as having entered into a contract to purchase which his representatives would be bound to

complete. The latter dictum, which is inconsistent with the decision in *Skelton* v. *Younghouse*, *supra*, is apparently the origin of the alleged presumption against the assignability of an option.

The various circumstances which have been considered material in arriving at the testator's intention in regard to the assignability of options deserve to be considered in some detail.

In *Re Cousins*, *supra*, the testator had carried on two hotels at Cardiff, one of which he had made over in his lifetime to his son Henry. By his will he devised (*inter alia*) the other hotel to his trustees upon trust to pay annuities to his wife and sister and to divide the surplus rents among his four children. On the death of the survivor of the annuitants he gave Henry an option to purchase the hotel at the price of £10,000, such price to fall into his residuary estate, and subject thereto the hotel was to be sold and the proceeds to fall into his residuary estate, the proceeds of which estate were also given to his four children in equal shares. The will contained a declaration that his children should respectively be deemed to take vested interests from the time of his decease. By a codicil the testator, after providing for Henry's right to a formal assignment of the hotel already made over to him, declared that in the event of his death in his (the testator's) lifetime all the beneficial interest which he would have taken under the will had he survived should go to and be vested in his executors. Henry predeceased both the annuitants, and on the death of the survivor of them the question arose whether his executors were entitled to exercise the option, the property subject to which had then trebled in value.

It was held that the option was personal. Brett, M.R., said the first thing to be considered was the state of things when the testator made his will and with which he was about to deal. He had been working the two hotels together until he let one. The natural desire of an hotel-keeper in a town of moderate size was to hold as many of the hotels as he could, or at all events to have a personal influence with regard to as many as he could. Therefore if he could not carry on the other hotel personally the testator would like to be the owner or landlord, so that the lessee should not interfere with him. The first thing that would be in his mind would be that Henry should have the same advantages as himself, and should either have the power of working the two hotels together, or should have such an interest in both that one could not be set up as a rival to the other. It was very necessary also to look at the price to be paid. Although there was no evidence about it, it looked as if it was the real value of the hotel estimated at the date when the will was made, and as the probable value when the two annuitants were dead. It was a large price, but the money was to fall into residue, and if the testator was putting a fair price on it, he gave Henry nothing except this power over the business, which was a personal advantage to him in carrying it on.

Cotton, L.J., pointed out the fallacy in the argument that because the option was valuable and was property it therefore passed to Henry's executors.

Lindley, L.J., said there was not a word in the will to show that Henry's executors, administrators and assigns should exercise the option. The language was rather adverse to that construction, and the other parts of the will did not carry the matter any further. The question must be determined before the clause relating to "vested interests" was reached, and an option personal to the son given by the first clause was not a vested interest within the subsequent clause. As regards the codicil, the option was in one sense a "beneficial interest", *viz.*, if £10,000 was less than the value; but the preceding part showed that the words did not relate to the hotel in question. The argument that it would be a breach of trust for Henry's executors to exercise the option because the latter's will directed investment in certain specified investments which did not include an hotel, and that therefore he had shown an intention that his executors should not exercise it, was not dealt with in the judgments; but the argument put forward on the other side that, if the option passed to the executors, it would be a breach of trust not to exercise a valuable option, though they might be bound (in the absence of any power to retain investments) to sell the hotel and invest the proceeds in authorised securities, would appear to be correct.

In *Wright* v. *Morgan*, *supra*, the testator left the residue of his estate to his wife and his son Harry on trust to sell and convert and to divide the proceeds of sale and conversion into shares, which were to be conveyed to his children. The will contained a provision that the trustees should not sell the testator's freehold farm or any part thereof until it should have been offered to Harry by his wife, if she should then be living, or, if dead, by his son Edward, at a valuation to be made as therein mentioned, and until Harry should have refused or omitted to notify his acceptance of the offer within three months. By a codicil the testator appointed his son Douglas an additional trustee and declared that he should be the person to make the offer instead of Edward in the event of his wife's death. After the testator's death, Harry sold his share under the will, including the option, to Douglas, and on the trustees deciding to sell the farm, it was offered by the testator's wife to Douglas, who purported to exercise the option and purchase the farm. An action was brought by some of the other beneficiaries to set aside the sale.

The Privy Council set aside the sale on the ground that it was made to a person in the position of a trustee. They did not, however, doubt that the option might have been assigned to a person not being a trustee, and their judgment proceeded on this assumption, though, of course, the opinion was not necessary to the decision.

It is to be noted that the option was neither a present option nor of any pecuniary value, though presumably of value to Douglas, if not to Harry, personally. No provision was made for the possibility of both the testator's wife and Douglas predeceasing Harry, though perhaps the inclusion of both the former as persons alternatively to make the offer pointed to the continuance of the offer beyond Harry's life. There appear to have been no other words in the will nor anything in the

surrounding circumstances which pointed either to assignability or the opposite.

In *Skelton* v. *Younghouse*, *supra*, the testator was entitled at his death to 300 £10 shares in a private company which were registered in the name of his son Edward as his nominee. By his will he gave his residuary estate to trustees on trust for sale with the fullest discretion to postpone sale, and to pay the income to his wife for her life, and after her death in trust for Edward and his other son in equal shares. After reciting that he was desirous that Edward " should have the opportunity of becoming absolute owner " of the above shares, the testator declared that on the decease of his wife or previously thereto in case or whenever the trustees should proceed to realise the part of his estate consisting of or including such shares and his beneficial right thereto and ownership thereof, his son Edward should have " the option of purchasing and becoming absolute owner of the said shares or any part thereof and all my estate interest right and title therein and thereto the value of such shares for the above purpose being estimated at par value ". Prior to the widow's death in 1939 Edward purported to assign the benefit of the option to the trustees of a separation deed as security for the payment of an annuity which he thereby covenanted to pay to his wife. Both sons survived the widow, but Edward died shortly after her without having exercised the option. The shares, which were much above par and of considerable value, were still unsold.

Bennett, J., held both on the authority of *Re Cousins*, *supra*, and on the construction of the will that the option ceased to be exercisable on Edward's death.

The Court of Appeal upheld the decision (Luxmoore, L.J., dissenting) on the construction of the will, though they differed from Bennett, J., as to the effect of *Re Cousins*, *supra*.

The House of Lords unanimously dismissed the appeal, though in the opinion of Lord Wright " the issue was on a razor's edge ". The deciding factor in the view of all the members was the peculiar form of the option, which was regarded as an option of acquiring the beneficial interest in the shares given to Edward as the registered holder. Lord Macmillan described it as " an option to convert a nominal ownership into a beneficial ownership ", the qualification of nominal ownership being personal to Edward. Various other factors were, however, regarded as material.

Viscount Maugham pointed out that the option was not an immediate unconditional gift of a valuable right, but one conditional upon the happening of the first of two events, and it could not be certain that Edward would be alive when it became exercisable; that any exercise of the option would be at his brother's expense; that the reference to " any part " of the shares seemed to suggest that the testator thought that Edward (who was the elder brother) would in certain events prefer not to exercise the option, or not to exercise it over all the shares; and that the shares were in a family concern in which the testator might well have desired Edward to continue to hold a substantial interest.

Lord Russell stressed the use of the word " opportunity " which, he

thought, suggested that the person to whom the opportunity was given might not think fit to avail himself of it. This introduced the idea of the individual opinion of a particular person.

Lord Macmillan expressed the opinion that cases on the interpretation of contracts were not entirely apposite, as a will was a soliloquy while the language of a contract was addressed to another. (In *Re Cousins*, *supra*, Brett, M.R., had gone further, and said that to quote cases or rules as to the construction of contracts was almost useless.) If the option was not personal to Edward it became transmissible by or through him immediately on the testator's death and before it could be exercised, which was inconsistent with the testator's scheme of directions.

Lord Wright said that apart from the peculiar nature of the option he should not have considered it personal. The shares were marketable things in action, though at a later date subject under the articles to a right of pre-emption. There was nothing to show that the holding of them by Edward was associated with any direct share in the management of the company, or that it had any sentimental value attached to it, or that the shares could not have been sold at once by Edward if he acquired them under the will. The condition of acquiring the shares, if the option was exercised, was simply the payment of a sum of money which anyone could make. The option was a valuable option, not on the face of it different in kind from a similar option conferred by contract *inter vivos* in the ordinary course of business and in normal course clearly transmissible. The absence of the words " executors administrators and assigns " was not significant either way, though if they had been there the difficulty could not have arisen.

Luxmoore, L.J., in his dissenting judgment in the Court of Appeal had also dealt with the question of value. His Lordship said: " It seems to me that there is less foundation for holding that an option is personal to the donee where the result of its exercise confers a large pecuniary benefit than where the option is to buy at a valuation. For, in the former case, it would seem to be the intention of the testator to confer on the donee of the option a benefit translatable into terms of £ s. d." It is to be noted that in *Skelton* v. *Younghouse*, *supra*, the shares were above par at the date of the will, whereas in *Re Cousins*, *supra*, the appreciation in value was subsequent thereto. Lord Wright, however, pointed out that the testator's dominant object appeared to be to give Edward the opportunity of getting the shares, and if he had intended to bequeath a particular sum of money, he could have done so without the elaborate machinery of an option.

The decision of the House of Lords rendered it unnecessary to deal with the purported assignment by Edward, which was obviously in the circumstances ineffective. A further question had been raised in the Courts below as to the inclusion in the option of certain bonus shares which subsequently to the testator's death were issued to Edward as holder of the 3,000 £1 shares into which the original 300 £10 shares had been subdivided. But in the view which Bennett, J., took it was unnecessary to decide the point and in the Court of Appeal it was not

pressed, having regard to *Att.-Gen.* v. *Oldham*, [1940] 1 K. B. 599; and it was not argued in the House of Lords.

Different considerations apply to the assignability of options created *inter vivos*. In both cases until exercise of the option the obligation is unilateral, but its exercise creates a binding contract for sale and purchase. (See *Raffety* v. *Schofield*, [1897] 1 Ch. 937.) The general rule, however, is that a contract is assignable unless there is an element of personal skill or confidence. The principle applies to an option to require a lease or the renewal of a lease; but such an option, though it creates an interest in the land, will not be assignable if an intention to that effect is to be inferred from the fact that it was granted on grounds personal to the lessee, or the lease itself was to contain a covenant against assignment, or probably where the lessee's solvency was a material element. (See *Crosbie* v. *Tooke*, 1 My. & K. 431; *Buckland* v. *Papillon*, L. R. 2 Ch. 67; *Tolhurst* v. *Associated Portland Cement Manufacturers, Ltd.*, [1903] A. C. 414, 423.)

An ordinary business option to purchase shares is (as appears from Lord Wright's judgment in *Skelton* v. *Younghouse*, *supra*) generally assignable, and there seems no reason why the same general principles should not apply to options as would govern the assignability of the contracts which would result from their exercise. The question of intention is, of course, important, and was so regarded by McCardie, J., in *County Hotel & Wine Company* v. *London & North Western Ry.*, [1918] 2 K. B. 251, 257; affirmed on different grounds [1919] 2 K. B. 29; [1921] 1 A. C. 85. Nor does it appear to be material from this point of view whether the option creates an interest in the property or is merely personal.

The benefit of an option to purchase the reversion expectant on a lease, though collateral, passes to assigns of the term, as appears from the judgments in *Batchelor* v. *Murphy*, 42 T. L. R. 112, but such an option does not "touch or concern the thing demised" so as to bind assigns of the reversion. The burden of a covenant to renew the lease, and presumably an option to renew, do, however, run with the reversion. The exception is anomalous and not to be extended, and in the recent case of *Giles* v. *Hutchins*, [1942] Ch. 124, the Court declined to apply it to an agreement which did not strictly amount to a covenant to renew.

An option to purchase land is, if it creates a contingent interest therein, subject to the rule against perpetuities; but that rule, though it precludes specific performance being granted, does not prevent the donee from recovering damages for the breach from the donor personally. (See *Woodall* v. *Clifton*, [1905] 2 Ch. 257; *Worthing Corporation* v. *Heather*, [1906] 2 Ch. 532.) If the option is merely personal, *e.g.*, the agreement to give the "first refusal" of land in *Manchester Ship Canal Co.* v. *Manchester Racecourse Co.*, [1901] 2 Ch. 57 (cf. *South Eastern Ry. v. Associated Portland Cement Manufacturers, Ltd.*, [1910] 1 Ch. 12), the rule does not apply.

The donee of a personal option cannot assign it at law or in equity, but he can contract for value to exercise it himself during his lifetime

for the benefit of a third party; and a purported assignment will generally have the effect of constituting him a trustee of the benefit of the option for the assignee. This follows from the cases of *Western Waggon Co.* v. *West*, [1892] 1 Ch. 275; *Whiteley* v. *Hilt*, [1918] 2 K. B. 808. A personal option which is exercisable on the happening of an event cannot be well exercised until the event happens (*Re Cousins*, *supra*, at p. 213), but the donee may similarly bind himself to exercise it on behalf of an assignee conditionally on his surviving the event. A future option, even if assignable, appears to fall within the category of future property, and consideration will therefore be necessary to support an assignment. (See *Glegg* v. *Bromley*, [1912] 3 K. B. 474; *Holt* v. *Heatherfield Trust*, [1942] 2 K. B. 1.) The assignment in *Skelton* v. *Younghouse*, *supra*, appears to have been made for consideration.

A SHORT INDEX TO EMERGENCY REGULATIONS AFFECTING PROPERTY.

(*Continued from Vol.* 6, *p.* 273.)

ADMINISTRATION OF ESTATES.

Defence (United States Forces—Administration of Estates) Regulations (1942 No. 2562) enable authorised military officers of the United States to wind up the estates of deceased members of the U.S. forces without obtaining a grant of representation and facilitate the grant of representation where desirable.

AGRICULTURE.

1942 No. 961, para. 9 amends Regulation 62 of the Defence (General) Regulations, 1939, and enables the Minister of Agriculture to direct the use for agricultural purposes of all land other than gardens.

CANALS.

1942 No. 1279, para. 6 (amending Regulation 69 of the Defence (General) Regulations, 1939), enables the Minister of War Transport to take control of canal undertakings. This power has been exercised by 1942 Nos. 1327, 1658, 2053.

COMPANIES.

1942 No. 505 amends the Defence (Companies) Regulations (1940 No. 1213 as amended by 1940 No. 1402, 1942 No. 94) in relation to the Channel Islands.

1942 No. 510 extends Regulation 5 of the Defence (Companies) Regulations, 1940, to countries and territories in the countries not forming part of the British dominions in which His Majesty has jurisdiction and in which powers conferred by the Foreign Jurisdiction Acts, 1890 and 1913, are exercisable, in so far as Regulation 5 relates to companies incorporated under the law of such countries or territories.

Colonial Companies (Registration) Rules (1942 No. 565) deals with the registration of certain colonial companies by the Registrar of Companies or the Registrar of Companies for Scotland.

1942 No. 803 amends Regulations 3, 5 and 7 of the Defence (Companies) Regulations, 1940.

Burma Companies (Registration) Rules (1942 No. 1018) prescribed the procedure for registering companies incorporated under the law of Burma in England or Scotland.

1942 No. 1882, para. 4 amends Regulation 3 (2) (c) of the Defence (Companies) Regulations, 1940.

COMPENSATION. (*See also* FIXTURES; MINING.)

Regulation 79CA of the Defence (General) Regulations, 1939 (added by 1942 No. 1881, para. 12) enables the compensation in the nature of rent payable in respect of requisitioned premises under section 2 (1) (a) of the Compensation (Defence) Act, 1939 (c. 75), to be paid to the landlord instead of, as provided by section 2 (2) of that Act, to the tenant, in cases in which the tenant is exempt, under the Landlord and Tenant (War Damage) Acts, from liability to pay rent or in cases where the tenant cannot be found and has failed to pay rent for the preceding six months.

COURTS EMERGENCY POWERS.

See the Courts (Emergency Powers) (No. 1) Rules (1942 No. 1515), the Courts (Emergency Powers) (No. 2) Rules (1942 No. 2163) and the County Court (Emergency Powers) (No. 1) Rules (1942 No. 2164).

DEATH CERTIFICATES.

See as to deaths occurring in consequence of war operations the Defence (Burial, Inquests and Registration of Deaths) Regulations (1942 No. 1444) as amended by 1942 No. 1549.

DEFENCE (FINANCE) REGULATIONS. (*See also* SECURITIES).

1942 No. 572 adds para. (1A) to Regulation 8 of the Defence (Finance) Regulations, 1939, enabling the Treasury to obtain information from British subjects or British protected persons resident outside the sterling area.

1942 No. 2095 extends the Defence (Finance) Regulations, 1939, to the Isle of Man.

1942 No. 2096 amends the Defence (Finance) Regulations, 1939, Regulations 1 (7), 2A, 2C (4), 3 (7) (a), 3B (1), 3C, 3F (2), 5 (3) (*c*), substitutes a new Regulation 3A (restrictions upon transfer of securities), and adds Regulations 3BA (restriction on settlements) and 9B (restriction on agreements).

Importation of Notes (Exemptions) Order (1942 No. 2448) exempts from the restrictions of Regulation 2B the bringing of banknotes into the United Kingdom from abroad up to £10, and from Eire up to any amount and revokes S. R. & O. 1940 No. 1515 and S. R. & O. 1941 No. 95.

Blocked Accounts (Authorized Investments) (No. 2) Order (1942 No. 2458) gives a fresh list of securities in which blocked accounts may be invested and revokes preceding orders.

Defence (Finance) (Definition of Sterling Area) Order (1942 No. 2626) re-defines the sterling area (adding Madagascar) and revokes preceding orders.

Regulation of Payments (Consolidation) Order (1943 No. 119) regulates payments under Regulations 3C and 5B and revokes preceding orders.

EVACUATED AREAS.

Regulation 6 of the Defence (Evacuated Areas) Regulations, 1940 (which extended the operation of the Courts (Emergency Powers) Acts) has been revoked, except as to Scotland, by 1942 No. 2563. For amendment of para. 5 of the 1940 Regulations see 1942 No. 1882, para. 5.

EXCESS PROFITS TAX.

See the Excess Profits Tax (Metals and Oil Producing Concerns) Regulations (1942 No. 1243); Relief from Double Excess Profits Tax (British Guiana) Declaration (1942 No. 1311); Relief from Double Excess Profits Tax (Aden) Declaration (1942 No. 2196).

FIXTURES.

1942 No. 801, para. 5 adds a new Regulation 50B to the Defence (General) Regulations, 1939, containing new provisions as to the severance of fixtures (*e.g.*, iron railings) required for war purposes and the compensation therefor. As to notices of claim for compensation, see Compensation (Defence) Notice of Claim Rules (1942 No. 1349); as to the procedure for determining disputed claims see Compensation (Defence) General Rules (1942 No. 1667).

INCOME TAX.

Post-War Credit (Income Tax) Regulations (1942 No. 1111) deals with the ascertainment and recording of post-war credits under section 7 of the Finance Act, 1941 (c. 30).

As to deduction of income tax from wages and salaries see Deduction of Income Tax (Sched. E) (Amendment No. 3) Regulations (1942 No. 1324) and Seasonal Employments (Income Tax) Regulations (1942 No. 1970).

LIABILITIES WAR-TIME ADJUSTMENT.

Liabilities (War-Time Adjustment) Rules (1942 No. 1302) replace the Liabilities (War-Time Adjustment) Rules (1941 No. 942) with considerable extensions and amendments.

MINING.

Regulation 51A of the Defence (General) Regulations, 1939 (added by 1942 No. 92, para. 8, as amended by No. 1279, para. 3) enables a competent authority to authorise the working of coal mines and of other mineral mines and quarries and to authorise the taking of possession of the mines or quarries for that purpose, subject to the payment of compensation.

Regulation 51B (added by 1942 No. 1279, para. 3) enables a competent authority to authorise the withdrawal of support from any land in the course of mining or quarrying. Regulation 54D (added by 1942 No. 1279, para. 4) enables the Minister of Fuel and Power to take control of all coal mining undertakings. For exercise see Coal Mining Undertakings Control Order (1942 No. 1351); Quarries (Open-cast Coal Workings) Order (1942 No. 1662).

OATHS.

Foreign Representatives (Administration of Oaths) Order (1942 No. 571) empowers officers in the service of the United States of America and of the Swiss Confederation to administer oaths and take affidavits in countries to which the order applies.

PATENTS, ETC.

1942 No. 805 amends Regulation 3 (1) of the Defence (Patents, Trade Marks, etc.) Regulations (1941 No. 1780).

1942 No. 1882, para. 7 amends Regulations 1 (2), 3 (2) of and adds Regulation 3A (use of inventions in U.S.A., etc.) to the Defence (Patents, Trade Marks, etc.) Regulations, 1941. See also Use of Inventions, etc., in U.S.A. (Exemption) (No. 1) Order (1943 No. 124).

1943 No. 376 adds a new Regulation 5A (relaxation of certain formal requirements) to the Defence (Patents, Trade Marks, etc.) Regulations, 1941.

REQUISITIONED LAND. *See* COMPENSATION; FIXTURES; WATER.

SECURITIES. (*See also* DEFENCE (FINANCE) REGULATIONS.)

Securities (Validation) Order (1942 No. 527) made under the Securities (Validation) Act, 1942 (c. 10), validates certain transfers to and acquisitions by persons in the sterling area of life assurance policies and other contracts entered into with assurance companies for securing the payment in the future of any capital sum or sums or of an annuity.

1942 No. 2096, para. 5 substitutes a new Regulation 3A (restrictions upon transfer of securities) in the Defence (Finance) Regulations, 1939. The effect of the new regulation is explained in Treasury Instructions dated October 20, 1942, printed in the supplement to the London Gazette of that date and Bank of England Instructions of the same date (F.E. 190).

Capital Issues Exemptions Order (1942 No. 2369) amends para. 2 of the Capital Issues Exemption Order (1941 No. 648).

Securities (Restrictions and Returns) (No. 2) Order (1942 No. 2545) and Acquisition of Securities (No. 3) Order (1942 No. 2546) carry out a mobilisation of South African securities.

Securities (Restrictions and Returns) (No. 1) Order (1943 No. 61) and Acquisition of Securities (No. 1) Order (1943 No. 62) make similar provision as regards Indian railway securities.

TRADING WITH THE ENEMY.

Trading with the Enemy (Custodian) (No. 3) Order (1942 No. 542) exempts from the operation of para. 1 of the Trading with the Enemy (Custodian) Order (1939 No. 1198) payments by a bank to individuals, bodies corporate or unincorporate in the Channel Islands and in the areas occupied by the Japanese who have become technically enemies owing to enemy occupation.

Trading with the Enemy (Madagascar) Order (1942 No. 2298), Trading with the Enemy (Specified Areas) Revocation Order (1943 No. 359) and Trading with the Enemy (French Somaliland, Reunion and Dependencies of Madagascar) Order (1943 No. 360) free the areas mentioned from trading with the enemy restrictions.

WAR DAMAGE.

War Damage (Business Scheme) (No. 6) Order (1942 No. 456) fixed the premium for the period April 1, 1942, to September 30, 1942, and made consequential amendments in earlier orders.

Removal and Storage of Household Chattels Order (1942 No. 613) amends and extends the Removal and Storage of Household Chattels Order (1941 No. 1499).

War Damage (Business Scheme) (No. 7) Order (1942 No. 715) exempts radio receiving sets and radio gramophones let out on hire from compulsory insurance.

War Damage (Appeals and References to Referees) Rules (1942 No. 925) prescribes the procedure on appeals and references under sections 6, 9 of the War Damage Act, 1941 (c. 12).

War Damage Contribution (No. 4) Regulations (1942 No. 1068) (to be read with the War Damage Contribution Regulations (1942 No. 309)) deals with the continuing effect of assessments.

War Damage (Business Scheme) (No. 9) Order (1942 No. 1665) amends the War Damage Business Scheme Order (1941 No. 450) by adding provisions relating to the insurance under the business scheme of ships which are laid up together with their machinery, tackle or furniture.

War Damage (Private Chattels Scheme) (No. 3) Order (1942 No. 1710) makes similar provision for insurance under the private chattels scheme.

War Damage (Valuation of Articles as Materials) Regulations (1942 No. 1724) prescribes a formula for the ascertainment of the value of articles which formed part of a war-damaged hereditament which became available as materials and for the valuation of articles which were used in temporary works.

War Damage (Business Scheme) (No. 10) Order (1942 No. 1869) prescribes the insurance premium for the six months from October 1, 1942, to March 31, 1943, with variations with reference to insurances of laid-up ships. It amends the War Damage (Business Scheme) Order (1941 No. 450) by redefining the exemption of goods subject to bailment in para. 6 (b) of that order and by amending the Limitation and Conditions in Parts I and V of the Second Schedule to that Order with reference to old books and printed publications so as to substitute an age of 100 years for the former age of fifty years.

War Damage Mutual Insurance Funds (Unclaimed Balances) Order (1942 No. 2441) enables unclaimed balances of mutual insurance schemes to be paid into an account at the Bank of England.

War Damage (Valuation of Hereditaments in Special Cases) Regulations (1942 No. 2490) prescribes rules for the valuation under the War Damage Act, 1941, s. 3, of hereditaments not normally the subject of a sale in the open market.

War Damage to Goods (General) Regulations (1943 No. 209) regulates the conditions under which free grants may be made under section 68 of the War Damage Act, 1941.

War Damage (Business Scheme) (No. 11) Order (1943 No. 287) fixes the premiums for the six months commencing April 1, 1943.

WAR RISKS INSURANCE.

War Risks (Commodity Insurance) (No. 2) Order (1942 No. 741) restates the exception of growing crops, plants and trees, live stock and agricultural products from insurance under the Commodity Insurance Scheme.

War Risks (Commodity Insurance) (No. 3) Order (1942 No. 996) fixed the premium for the three months commencing on June 3, 1942; War Risks (Commodity Insurance) (No. 4) Order (1942 No. 1639) for the three months commencing on September 3, 1942; War Risks (Commodity Insurance) (No. 5) Order (1942 No. 2355) for the three months commencing December 3, 1942; War Risks (Commodity Insurance) (No. 1) Order (1943 No. 178) for the three months commencing March 3, 1943.

Commodity Insurance (Special Payments) Regulations (1943 No. 210) provides for the making of payments, otherwise than under policies, for voluntarily insurable goods.

CORRIGENDA.

Form "A", page 313.—For last sentence *read* [*or* but the vendor shall be entitled to retain the deposit paid by the purchaser].

"The present state of the Rule in Howe v. *Lord Dartmouth."*

An article bearing the above title appeared in the March number of the current volume of *The Conveyancer*. On re-reading the article, it seems to me that the first paragraph of page 132 is likely to be misleading unless a further point be added. The paragraph describes the one case in which a tenant for life under a settled residuary gift was held to be restricted to a 4 per cent. income even as regards any *realty* comprised in the gift. It omits the point that section 28 of the Law of Property Act, 1925, now operates to exclude such a result. This point ought, I think, to have been brought out expressly in the paragraph concerned, despite the fact that the effect of section 28 was stated in the paragraph next preceding it.

A learned correspondent has raised a further point. When unauthorised investments do not produce sufficient income to pay the life-tenant his 4 per cent. under the rule in *Howe* v. *Dartmouth*, the deficit is chargeable against any subsequent excess income or against the ultimate proceeds of sale. Such was the decision of Farwell, J., in *Re Fawcett*, [1940] Ch. 402. There remains the question whether this deficit itself bears interest. According to page 408 of the reported judgment, the deficit is to be "calculated at 4 per cent. simple interest but less tax". It was assumed, in the above article (at p. 135), that this passage implies that the deficit itself carries simple interest. The reported words of Farwell, J.'s, final declaration (at p. 410), however, are rather different: the deficit is there described as "any interest . . . in arrear (but calculated *as* simple interest only)". In the light of this latter passage, the true construction of the judgment is perhaps that the deficit does not itself bear interest. Nevertheless, if this is indeed the rule, it seems to bear hardly on the life-tenant and is difficult to reconcile with the principle formulated in *Re Chesterfield's Trusts*.

S. J. Bailey.

THE LIBRARY.

Courts Emergency Powers. By John Burke, Barrister-at-Law. London: Sweet & Maxwell, Ltd. 1943. iv and 148 pp. (8s. 6d.)

This extremely useful little book contains a summary of the new Courts Emergency Powers Act and Rules, an annotated copy of the Act, a summary with brief annotations of all the cases decided under the 1939 Act, the consolidated rules of the Supreme Court with some annotations (and a handy summary of practice in the King's Bench Division with table of costs) and the County Court Rules, etc., together with the Courts (Emergency Powers) (Exemption) Order, 1940. Altogether it is a pretty complete guide to the existing law and practice and contains forms to supplement the official forms which are definitely incomplete.

The Courts (Emergency Powers) Act, 1943, repeals the 1939 Act, the Possession of Mortgaged Land (Emergency Provisions) Act, 1939, the Courts (Emergency Powers)

Amendment Acts, 1940–42, and Part II of the Liabilities (War-Time Adjustment) Act, 1941. It is, therefore, vital to the practitioner to have up-to-date information on the subject.

The Act affects conveyancers in two directions. Sometimes it is necessary to enforce securities by resort to their several remedies. This will normally require leave of the Court and it is essential to know what procedure must be adopted and at what stage steps should be taken. This can very simply be discovered by resort to this book, and the summary of decided cases is very useful, particularly as the annotations indicate where the case law has been affected by the new legislation, *e.g.*, that an assignee of an equity of redemption now has a right to apply for relief.

Secondly, the question of the Courts Emergency Powers Act turns up from time to time on titles not only where the vendor himself is affected but where some transaction has occurred on the title since 1939 that may be affected by its provisions. This is a handy little volume that can be made a kind of *vade mecum* for the purpose of testing these questions of title.

The Law of Income Tax. By E. M. KONSTAM, K.C. Ninth Edition. London : Stevens & Sons, Ltd., and Sweet & Maxwell, Ltd. 1943. (£2 17s. 6d. net.)

THREE years have elapsed since the appearance of the eighth edition of *Konstam on Income Tax*, and the changes in the law which have occurred in the interval amply justify the labour involved in bringing this indispensable treatise up to date. They include revolutionary alterations in the income tax position of farmers and the 1941 legislation with regard to tax-free annuities and emoluments, to say nothing of such notable innovations as those relating to the recovery of tax under Schedule A and to the machinery of assessment and collection generally. The Courts have also been active and have (among other contributions to the law of income tax) begun to illuminate some of the dark places in the anti-tax avoidance legislation of 1938 and 1939 with reference to settlements and privately controlled Investment Companies.

All this new material has been skilfully fitted into its proper place, with the result that the new edition gives the reader what he can find nowhere else—a complete conspectus of the law of income tax as it stood in the early part of 1943. The texts printed in the Appendix comprise not only the whole of the Income Tax Acts down to and including the Finance Act, 1942, but also (greatly to the advantage of the reader) the principal Statutory Regulations now in force. In spite of the incorporation of much new matter, the book remains easy to handle, the number of pages having been actually reduced to just over 700 by the use of smaller but clear and comfortably legible type.

LEONARD STEIN.

Krusin & Rogers' Solicitors' Handbook of War Legislation. Vol. III. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd.; Solicitors' Law Stationery Society, Ltd. 1942. (£2 15s.)

Your reviewer welcomes the appearance of this useful addition to the literature concerning the emergency legislation, original and delegated. Whatever may be said in favour of the loose-leaf system, it would seem to involve the necessity of examining a substantial number of indexes (or indices), one or more of which may be overlooked.

The writer must confess to a prejudice in favour of a series of bound books (such as this Handbook) each with one index, even if one must wait a little longer for its production. Subscribers can check the position concerning further legislation by referring to the details furnished by the publishers each month by way of free service. Testimony to the skill displayed by the authors in selecting the statutes, Orders in Council etc., included in the original work and the previous cumulative supplement can be given

by the present reviewer. On only one of the very numerous occasions on which this work has been consulted by him has it been found wanting in the material required; and it is fair to say that the point in that case was an out-of-the-way one which would probably not require consideration by any lawyer more than once during the war. This new volume contains a great deal of legislation which the average practitioner will be called upon to digest and advise upon in one form or another, such as the War Damage (Amendment) Act, 1942, and the Landlord and Tenant (Requisitioned Land) Act, 1942. The Courts (Emergency Powers) (Amendment) Act, 1942, which contains very important provisions, was, however, passed too late for inclusion in this volume. The important Restoration of Pre-War Trade Practices Act, 1942, is printed in full. Those company officials who are salvage-minded may already have handed over all transfer deeds upwards of three years old, and all stock and share certificates cancelled upwards of three years, to be converted into cartridge cases and other munitions of war. If not they may care to do so in reliance upon regulation 7 of the Defence (Companies) Regulations, a new regulation made by S. R. & O., 1941, No. 1778.

It is possible that a perusal of the Acquisition of Food (Excessive Quantities) Order, 1942 (at p. 340 of this work) may cause some persons to consider whether they have incurred penalties by acquiring for themselves or their households more than sufficient food (unrationed) for consumption during four weeks, bearing in mind the fact that this Order applies to each and every kind of unrationed food not home-made and not acquired for the purchaser's business (as grower, manufacturer, merchant, etc.).

The note on p. 445 of this work concerning war damage instalments will need to be brought up to date in the next volume so far as concerns the opinion of the Law Society regarding apportionment under an open contract and under formal conditions of sale. In view of subsequent developments the note is now obsolete. But the authors have gathered together some very useful information and forms in connection with the War Damage Acts, *e.g.*, extracts from the War Damage Commission's Practice Notes, forms of certificate of title and of assignment of value payment.

Your reviewer, although knowing Mr. Thorold Rogers but slightly, can fully endorse Mr. Share's appreciation of the excellent work done by him in connection with the earlier parts of this Handbook, and his view that the death of Mr. Rogers in the service of his country marked the end of what would otherwise have been a brilliant career. His co-author Mr. Krusin and his successor Mr. Share have, however, if one may venture to compliment them, maintained the high standard set by the main Handbook and its previous Supplement. Practitioners should be deeply grateful to those who produce works of this kind. Without them we should indeed be lost in a quagmire of statutes, Orders in Council, and the like. The index is not merely good: it is very good indeed. Mr. Holroyde appears to have excellent intuition as to the word for which the practitioner will look, even where the official title of the Act, Order or regulation is quite different.

E. O. Walford.

Palmer's Company Law. Seventeenth edition. By His Honour Judge Topham, LL.M., K.C., a Bencher of Lincoln's Inn. London: Stevens & Sons, Ltd. 1942. (30s. net.)

The first edition of this work was published in 1898 and besides the sixteen editions during the intervening period there has been a number of reprints of various editions. A work as popular as this cannot call for a lengthy notice unless changes in the law or reconstruction of the form of the book require attention. In the case of this edition neither event has happened. The learned editor has brought the last edition (1938) up to date and has incorporated as well as the current decisions such of the emergency legislation as seemed to be fit for a work of this character; so half a page deals with the principles of the Courts (Emergency Powers) Acts in restricting enforcement of the rights of debentures and summarises the relevant cases. The learning and experience of the learned editor are a guarantee that this work has been well done and no doubt this edition will enjoy the popularity of its predecessors.

Death Duties. By ROBERT DYMOND, formerly Deputy Controller of the Estate Duty Office, Solicitor. Ninth edition. London: The Solicitors' Law Stationery Society. 1942. (£2 10s.)

Nine editions of this book have been published between 1913 and 1942. The eighth edition was published in 1937 and was brought up to date by supplements of which there were three, but enemy action destroyed the surviving copies and the standing type so that a new edition became imperative. The new edition has, however, done something more than incorporate the new cases. Some sections of considerable importance have been rewritten, such as that on remissions for those killed in war, and valuations of shares in companies. The learned and experienced editor has been able to call on the help of members of the Estate Duty Office in his revision, but we can only regret that an author of such experience of financial legislation has not thought fit to cast some light on the complicated provisions of section 25 of the Finance Act, 1941 (tax-free annuities), even if they only indirectly affect the duty payable.

"Dymond" is one of the best known and most frequently consulted of the books on death duties. It is, therefore, only necessary to welcome a new edition of a valuable work on an obscure branch of the law that is of constant practical importance.

BOOKS RECEIVED.

A Concise Summary and Guide to the War Damage Acts, 1941–42, for the Use of the Legal Profession. By Sir LANCELOT H. ELPHINSTONE. Second edition. The Solicitors' Law Stationery Society, Ltd. 8s. 6d. net.

Loose Leaf War Legislation. Edited by JOHN BURKE. 1942, parts 8–12, and 1943, parts 1 and 2 (September 1942—March 1943). 6s. net each.

Newport's Income Tax Law and Practice. By C. A. NEWPORT, F.C.R.A. 14th edition. Sweet & Maxwell, Ltd. 15s net.

Woodfall's Law of Landlord and Tenant, Cumulative Supplement No. 3, including Emergency Legislation and Recent Cases to October, 1942. Sweet & Maxwell, Ltd., and Stevens & Sons, Ltd. 10s. net.

Where to Look for your Law, a Guide to Current Law Books. By R. H. STEVENS. Stevens & Sons, Ltd. 2s. 6d. net.

The Conveyancers' Year Book, 1943. By SIR LANCELOT H. ELPHINSTONE. The Solicitors' Law Stationery Society, Ltd. 25s. net.

NOTES OF RECENT CASES.

1. *CONVEYANCING AND REAL PROPERTY CASES.*

Vendor and purchaser—incumbrance—rent paid in advance—concealment within Law of Property Act, 1925, *s.* 183 (2).—*District Bank* v. *Luigi Grill*, [1943] 1 All E. R. 136, arose out of some rather peculiar facts, and is reported so far as it concerns an action for damages against the solicitors of the other defendants to the action. The first defendants were lessees of certain property, which was underlet and was mortgaged to the plaintiffs. The solicitors acted for the lessees both on the grant of the underlease and mortgage. The sublease was granted only upon the terms that the first three years' rent was paid in advance. The lessees granted the mortgage shortly after the grant of the sublease and the solicitors failed to inform the mortgagees that the rent had been paid in advance for three years. About eighteen months later the plaintiffs appointed a receiver and the fact came to light that there was no rent to collect from the sublessee. Consequently, the mortgagees fearing that their security might be inadequate brought an action for damages against the solicitors for failing to disclose an incumbrance under the Law of Property Act, 1925, s. 183, whereby the seller or mortgagor of land or the solicitor or agent of any such seller or mortgagor who conceals any instrument or incumbrance from the purchaser is, in certain circumstances, criminally liable and is also subject to an action for damages. Lord Clauson (sitting as an additional Judge) held that the plaintiffs could not recover on the ground that the action only lay where there was an intent to defraud. The judgment was based on the words of sub-section (2) and the relation between it and sub-section (1) by which the criminal liability is imposed. It would, therefore, seem that the intent to defraud must be a criminal intent to defraud.

The learned Judge carefully safeguarded his decision from amounting to a ruling that the payment of rent in advance was an incumbrance or instrument. He pointed out that the failure to disclose the position of the rent raised a very serious question whether or not it was an incumbrance or instrument for the purposes of the Act.

Vendor and purchaser—sublease—headlease disclaimed by trustee in bankruptcy—proper description of sublease.—Re Thompson & Cottrell's Contract, 59 T. L. R. 127, embodies a short but interesting point, namely, where a vendor who was a sublessee sells, should he describe his interest as a sublease when the headlease has been disclaimed by the headlessee's trustee in bankruptcy? In this case, after the date of the contract the vendor's solicitors sent to the purchaser's solicitors a notice of disclaimer by the trustee in bankruptcy of the headlessee executed by the trustee some years before the contract but in respect of which the

sublessee had not asked for any vesting order from the Court. The purchaser maintained that in order to make a proper title the vendor should obtain such a vesting order prior to completion. Uthwatt, J., held that the original underlease was properly described as an underlease and there was no valid objection to the title on that score. The reasoning by means of which the learned Judge arrived at his decision was that section 54 (2) of the Bankruptcy Act, 1914, did not destroy the lease by the effect of a notice of disclaimer, but only destroyed the rights and liabilities between the bankrupt and his creditors. In his Lordship's words: "It [the lease] is there to a certain extent as something like an extinct volcano; it may break out into active operation at any time." The sublessee would not be liable to the bankrupt under the covenants of the sublease, but he would be liable to the headlessor under the headlease if he did not pay the rent or abide by the covenants of the headlease: *per* Lindley, L.J., in *Re Finley*, 21 Q. B. D., at p. 486.

This seems to leave the position of the headlease peculiarly vague and probably the best statement of the position may be taken from the judgment of James, L.J., in *Re Levy*, 17 Ch. D., at p. 756, where he said that where "a lease . . . is to be deemed to have been surrendered, it [the statute] must be understood as saying so with the following qualification, . . . shall as between the lessor on the one hand, and the bankrupt, his trustee and estate, on the other hand, be deemed to have been surrendered". His Lordship had no occasion to determine where the legal estate in the interest, which survived this notional surrender, was vested after the disclaimer. Nor did Uthwatt, J., in the case noted; but the provision for a vesting order seems to make it clear that the legal estate does not vest in the sublessee. Can it be that the Bankruptcy Act, 1914, has created that abhorred spectre of the Common Law, an estate "*in nubibus*"?

Settlement—ultimate trust for next-of-kin—statutes of distribution at the death of the settlor—persons entitled.—*Re Hooper's Will Trusts*, [1942] 2 All E. R. 173, draws attention to a point that crops up and will continue to do so from time to time and requires careful consideration. In settlements there is always an ultimate trust to cover the cases of failure of issue and appointment by the first life tenant or settlor. These trusts are normally expressed to be in favour of the persons entitled under the statutes of distribution—the exact formula varies from precedent to precedent. In *Re Hooper's Will Trusts* (*supra*) the ultimate trust was: "the trustees shall stand possessed of the settled fund and the income thereof in trust for such person or persons as would have become entitled to the settled fund under the statutes for distribution of the personal estate of intestates at the death of the settlor had he died possessed thereof intestate and without having been married". The settlement was made in 1912 and the settlor died in 1941. The Administration of Estates Act, 1925, s. 50 (2), provides that the statutes of distribution referred to in a settlement made prior to 1926

means the statutes of distribution in force immediately before the commencement of the Act (except the Intestates' Estates Act, 1890) unless the contrary intention appears. It was argued that the words "at the death of the settlor" did not necessarily apply to the law relating to distribution. Farwell, J., held that though in his opinion the proper construction of the words "at the death of the settlor" must have reference to the law of distribution then in force he was not prepared to say that the words were capable of no other meaning: consequently he thought that there was an ambiguity and he followed the decision of Luxmoore, J., in *Re Sutton*, [1934] Ch. 209, that: "If there is ambiguity it is impossible to find a positive contrary intention in the will": at p. 218.

Obviously every settlement must be construed according to the terms read as a whole, but the effect of this decision appears to make it peculiarly difficult to find a contrary intention for the purposes of the Act. It is not, apparently, the correct meaning to be attributed to the words used, but whether first there is any ambiguity and if no ambiguity whether the words will constitute a contrary direction. Naturally enough in settlements made prior to 1926 this problem was not present to the minds of draftsmen and they may well have relied upon the Court to construe the trust, if necessary, and not to be put off by an alternative construction which might be "possible" but finally must be excluded. It remains to be seen how remote the "possibility" must be before it can be disregarded.

(2 K. & E., p. 593, n. (*o*).)

Covenant in restraint of trade—covenant not to compete—gift of capital to establish competing business.—Batts Combe Quarry, Ltd. v. *Ford*, [1942] 2 All E. R. 639, adds a new line of thought to the possible breaches of a covenant "directly to carry on or assist in carrying on or be engaged concerned interested or employed" in a competing business within a covenant in restraint of trade included in a sale of a business. Here the father of the other defendants gave his sons the capital to start up the competing business and advised his sons in the purchase of machinery and took part in the negotiations. The gift was a bounty and the father was not a partner in the business. It was also argued that the sons in accepting the money and establishing the business had procured a breach of covenant by the father. The Court of Appeal dismissed the case against the sons, partly on the technical ground of pleading and no substantial ground for leave to amend, and primarily because the acceptance of the gift did not amount to a procuration. The assistance given by the father might have constituted procuration had the matter been properly pleaded, but since the matter was finished it did not seem that there was any ground for an injunction nor more than an award of nominal damages. The tort of procuring a breach of contract requires careful pleading and proof, since although it covers contracts generally: *Bowen* v. *Hall* (1881), 6 Q. B. D. 333; *Jasperson* v.

Dominion Tobacco Co., [1923] A. C., at p. 713, an intention to interfere must exist and ignorance of the contract is a good defence: *British Industrial Plastics* v. *Ferguson* (1940), 162 L. T. 313.

On the other hand, the Court of Appeal held that the father had committed a breach of covenant (a) by supplying capital and (b) by negotiating for the supply of machinery. The two phrases upon which the Master of the Rolls principally relied were "concerned" and "employed". In his opinion (and Lord Clauson and du Parcq, L.J., concurred in his judgment) both lending the capital and negotiating the supply of machinery were matters of concerning himself with the business. The fact that the father had no financial interest was regarded as not relevant.

Bailment—contract of loan—liability of infant for failure to deliver up.—Ballett v. *Mingay*, [1943] 1 All E. R. 143, may have some wide repercussions, but it is a difficult case to apply because the facts are not clearly stated for reasons given in the judgment of Lord Greene, M.R. The vital factor was that an infant obtained goods under a contract of loan—an amplifier and a microphone. Apparently the loan was terminated, but the infant failed to redeliver the chattels on demand. The County Court Judge assessed a sum in damages for failure to return the articles. It was argued that to enable the lender to recover damages for failure to deliver up the chattels was to enforce a contract against an infant. The Court of Appeal unanimously rejected this argument and upheld the decision of the County Court Judge. The learned Master of the Rolls said that the case did not fall within the decision of *Jennings* v. *Randall*, 8 T. R. 335, but within the *ratio decidendi* in *Burnard* v. *Haggis*, 14 C. B. (N.S.) 45; that the failure to deliver up the goods was not an injury within the terms of the contract but an injury outside it. This was due to the fact that the infant had apparently parted with possession of the chattels contrary to the terms of the contract or bargain and so disabled himself from returning them on demand. In other words, parting with possession had determined the bailment and failure subsequently to return the goods had rendered the infant liable in detinue. It is noteworthy that the learned Master of the Rolls appears to have regarded the burden of proof that he was entitled under the bargain to part with possession to lie on the infant and not on the plaintiff.

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2. *WILL CASES.*

By R. E. MEGARRY.

Administration — testamentary annuities — valuation — insufficiency of estate — death of annuitant.—The valuable judgment of Uthwatt, J., in *Re Tankard, Tankard* v. *Midland Bank Executor and Trustee Co., Ltd.*, [1942] Ch. 69; 111 L. J. Ch. 70 (more fully reported [1941] 3 All

E. R. 458), on the subject of the executor's year, which was noted at 6 *Conveyancer* (N.S.) 205, has now been followed by an equally illuminating judgment on the valuation of testamentary annuities by the same learned Judge in *Re Bradberry, National Provincial Bank, Ltd.* v. *Bradberry, Re Fry, Tasker* v. *Gulliford*, [1943] Ch. 35; [1942] 2 All E. R. 629 (more briefly reported 59 T. L. R. 131). Many points are touched upon in the judgment, which is well worth reading for its clarity of exposition and aptness of illustration alone. The facts of the two cases were a little complicated, but the main point arose as follows. It is settled that where a testator bequeaths certain annuities and directs that a sufficient part of his estate should be set aside to meet them, an annuitant normally has no right to claim the capital value of his annuity in lieu of the annuity itself. If, however, the testator's estate is insufficient for the annuities to be met out of income, it may be necessary for the annuities to be valued and the annuitants paid the capital value of their annuities, suitably abated if necessary. This will not be done if it would defeat the testator's intention or if there is merely a competition between the residuary beneficiaries and a single annuitant with the right to resort to capital, but in the more usual case where there is an annuitant in competition either with a pecuniary legatee or another annuitant, the rule applies (*Re Cox, Public Trustee* v. *Eve*, [1938] Ch. 556; *Re Nicholson, Chadwyck-Healey* v. *Crawford*, [1938] 3 All E. R. 270; cf. *Re Farmer, Nightingale* v. *Whybrow*, [1939] Ch. 573). If in such a case an estate is insufficient at the death of the testator but subsequently an annuitant dies before administration has been completed, the annuitant's death may render the estate sufficient, unless the estate of the deceased annuitant can be said to be entitled to the capital value which his annuity had before his death. The question for decision was how the annuities were to be dealt with in such circumstances. In reaching a decision, the learned Judge stated a number of propositions which may conveniently be summarised as follows:—

(1) The question is one of administration alone, to be settled by reason tempered by convenience; the testator's intentions as expressed cannot be carried out, and the Court has to do the best it can (p. 40).

(2) The valuation of an annuity is to be on an actuarial basis, so that facts such as the health of the annuitant or the risks of his vocation are to be disregarded (p. 40).

(3) Wherever possible, the valuation is to be made by reference to the sum required to purchase a Government annuity of the specified amount (p. 40).

(4) The facts to be considered and the time for making the valuation are to be determined in accordance with the following principles:—

(a) The time to determine whether the estate is insufficient and thus whether the annuities are to be valued is not at the date of the testator's death or at the end of the executor's year, but simply at the end of the due course of administration. "The right of the annuitant is to receive his due in the proper course of administration, and what is his due can only then be determined" (p. 41); an apparent sufficiency or insufficiency at some other time is thus irrelevant.

(b) The facts to be considered are those known at the date when the decision is to be made, and facts known at that time are not to be disregarded merely because they occurred after the death of the testator. This was perhaps the main point in the two cases. It was argued that where an annuitant had died after the testator's death but before the estate had been duly administered, the proper course was to base the dead annuitants' rights upon the actuarial value of the annuity at the testator's death, and ignore the fact that the annuitant's life had in fact fallen short of its actuarial expectation. To do otherwise, it was said, was to make the amount which the annuitants would receive depend upon the diligence of the executors in their administration. The answer to this argument, the learned Judge said, was that "No one can complain of a speedy administration. If there be tardy administration the annuitants may bring their suit for administration and the matter can be brought to a head. . . . Facts which emerge as a result of delay nevertheless remain facts" (p. 45). The basic principle behind the decision that the Judge must take the actual rather than the actuarial life of the annuitant if it be known is, in the words of Lord Macnaghten, "Why should he listen to conjecture on a matter which has become an accomplished fact? Why should he guess when he can calculate? With the light before him, why should he shut his eyes and grope in the dark?" (*Bwllfa and Merthyr Dare Steam Collieries (1891) Ltd.* v. *Pontypridd Waterworks Co.*, [1903] A. C. 426 at 431.) As Uthwatt, J., put it, "Why should the Court neglect known facts and put itself in the position of a prophet who, when he knows all the facts, projects himself to an earlier date and predicts as the span of life of a person known to be dead the length of life of the hypothetical person who lives his actuarial life? Few would trouble to acquire the mantle of Elijah to make such a prophecy. In my view one who did so would only be wasting his coupons" (p. 42). As has been said on the valuation of what is to be brought into account under a provision for hotchpot, "The better view is that this valuation must be made on the actual facts so far as they are known and on an actuarial basis so far as they are not" (58 L. Q. R. 458). (To the authorities quoted by Uthwatt, J., on this point may perhaps be added *Re Cox* (*supra*) as more fully reported at [1938] 1 All E. R. 661 and the authorities therein cited on p. 668, *Hall* v. *Wilson*, [1939] 4 All E. R. 85, and *Huckle* v. *Lowestoft Corporation*, [1942] 2 All E. R. 688; his reference to "the discussion in the Court of Appeal in *Re Twiss* [1941] Ch. 141" (pp. 39, 40) is a little puzzling, as the case referred to was a decision by Simonds, J., from which there seems to have been no reported appeal.) It was argued that each annuitant had a vested right from the outset not only to his annuity but also to the value of his annuity should the estate prove insufficient, but this was met by pointing out that the annuitant had one right alone, namely, the right to an annuity to be satisfied in a due course of administration (p. 41). The estate of a deceased annuitant was thus not entitled to the capital value the annuity once had but only to any arrears which had accrued due.

(c) Having ascertained the point of time at which to determine

whether the estate is insufficient, and the facts to be taken into account, the time at which the valuation is to be made must be determined. It was held that the authorities established no hard-and-fast rule that where no annuitant is dead the valuation must be made at the date of the testator's death, and that where an annuitant is dead the date of the order of the Court is the proper date. The true rule is that the date of the testator's death is to be taken unless there has been some real change in the position of the annuitants between that date and the date of the order. The death of an annuitant before the date of the order is an important example of a real change in the position of the annuitants, but it is not the only case; a prolonged administration, the spectacle of an annuitant who had outlived the actuarial life which would have been allotted to him at the date of the testator's death, or the insolvency of the estate after being administered for a time on the basis that it was sufficient, might all make a valuation at the date of the order the proper course (pp. 46, 47).

(5) Two further points were dealt with:—

(a) The first was whether personal representatives may in the course of administration put a value on annuities without reference to the Court. It was held that they could, for there was no judicial discretion to be exercised, and although the personal representatives are entitled to take the Court's directions, they are not obliged to do so (p. 39).

(b) The second was whether anything had happened in either of the cases amounting to an act of administration which settled the rights of the annuitants. In *Re Fry*, the executors had, with the concurrence of the annuitants and the residuary legatee, instructed their solicitors to purchase abated annuities with the actuarial values of the annuities, but before anything was done to carry this out, one annuitant died; in *Re Bradberry*, there had not even been a settled decision to take any particular course. It was held that in neither case had there been an act of administration settling the rights of the annuitants; a mere decision not amounting to a binding pledge to act in a particular way was not enough. Whether anything short of actual distribution would suffice was not decided (p. 39).

(2 K. & E., p. 864, n.(z).)

Election — beneficiary to take under will only if he settles other property — whether statement of intention amounts to election — estoppel.—In *Re Shepherd, Harris* v *Shepherd*, [1943] Ch. 8; [1942] 2 All E. R. 584; 59 T. L. R. 50, A became entitled in 1920 under his father's will to a protected life interest subject to his mother's life interest and subject to a provision that he should not be entitled to any interest under the will "unless and until he shall execute a settlement of his interests under [his grandfather's will] providing life interests for himself and his wife if she survive him . . . and then for his children

or child absolutely (*a*) it being my intention that my said son shall be put to his election whether he shall receive any benefit under this my will". In 1932 A wrote to one of his father's trustees and to his grandfather's trustees stating that he had elected to make a settlement of his interest under his grandfather's will, but when in 1941, shortly after the death in action of A's only child, A's mother died and his reversionary interest fell into possession, A still had executed no settlement. In view of the letters written in 1932 Bennett, J., was asked to determine whether A, who had received no payments under his father's will, could still refuse to make the settlement. It was held that A need not make the settlement, for there was nobody who could compel him to do so. The letters to the trustees did not amount to a contract with them and the argument that there were unborn children who had some equity arising out of the letters was unsound. This argument was based on a statement in *Seton's Judgments and Orders* (7th ed. 1912) 1531 that "when once made, and communicated to the other parties affected, the election is final, and cannot be altered". The answer to this argument, the learned Judge said, was that "The communications in the present case, *i.e.*, the two letters were not sent to persons who were concerned with or affected by [A's] determination. In those circumstances the question of estoppel cannot arise. There is no one, and never can be anyone, able to say that [A] is estopped from stating that he did not elect to take under his father's will. I can see no grounds, either in law or in equity, which would enable me to say that [A] is bound now to make a settlement of the interest to which he is entitled under his grandfather's will" (p. 11).

Deed—£12,000 to be a first charge in the administration of the estate—whether equitable charge created.—A curious feature of *Re Rothermere* (1943), 59 T. L. R. 145, is that it may well have been to the advantage of a creditor to have been held an unsecured rather than a secured creditor. A deed was executed between R. and an employee of his providing that in return for the employee agreeing to stay in R.'s employment for at least five years more, R. would pay him £12,000 at some time in the next ten years, and that if R. died within that period "the said sum of £12,000 shall immediately become due and shall constitute a first charge on the estate of the party of the first part", *i.e.* R. On R.'s death within the ten years, it was argued that this provision constituted an equitable charge on the whole of R.'s estate and was thus void for non-compliance with the Bills of Sale Acts, 1878—1882; there was no antecedent debt and the charge and the covenant could not be severed: see *Bradford Advance Co., Ltd.* v.

(*a*) The Law Reports and Times Law Reports omit the words "and then for his children or child absolutely", but these appear in an apparently verbatim reproduction of the clause in question in the All England Reports. The argument in favour of A's unborn children having some equitable right to compel A to make a settlement is hard to understand unless the children would benefit under the settlement, and the version in the All England Reports thus seems preferable to the others.

Ayers, [1924] W. N. 152, at p. 153. Uthwatt, J., rejected this argument by holding that there was no bill of sale, thus making it unnecessary to explore the complexities of the bills of sale point. Although a charge on the whole of a person's estate could undoubtedly be created, and the provision in the deed might well mean that such a charge was to be created, it might also mean that the £12,000 was to be " a first charge in the administration of the estate, to be paid before any other debts. . . . In this particular case it appears to me to be ridiculous to assume that any person would set out to create a charge which would attach to every asset in the hands of his legal personal representatives. The existence of such a charge would render it improper for the executors in any way to alienate or dispose of those assets unless they had first of all paid off the creditor in question. In my opinion that could not have been intended " (pp. 145, 146). The learned Judge then pointed out that the other construction was quite reasonable and consequently held that no equitable charge had been created, with the result that the employee was entitled to claim, but only as an unsecured creditor. The hand of " *Ut res magis valeat quam pereat* " can be seen in this decision; the maxim was not expressly mentioned but one of its children, the *dictum* of Lord Cranworth in *Abbott* v. *Middleton* (1858), 7 H. L. C. 68, at p. 89 (cited *ante*, p. 162), was quoted and applied by the learned Judge.

Executor-creditor—lapse of time—Statutes of Limitation—sufficiency of Inland Revenue affidavit as acknowledgment—whether time runs during executorship.—The simple facts in *Bowring-Hanbury's Trustee* v. *Bowring-Hanbury*, [1942] Ch. 276; 111 L. J. Ch. 152, have given rise to a number of complications. A husband who had lent money to his wife was appointed her sole executor, and on her death swore an Inland Revenue affidavit which included the debt which she owed to him. Over six years after the loan was made he became bankrupt and the trustee in bankruptcy sued him *qua* his wife's executor for the debt. The question was whether the debt was statute barred. This turned on whether the affidavit was a sufficient acknowledgment to start time running afresh, and Bennett, J., held that it was not. First, no promise to pay could be implied from the affidavit, for " A person, when deposing to an Inland Revenue affidavit, never has in mind the making of any promise to anyone about anything " (p. 279). The Limitation Act, 1939, which made it unnecessary for an acknowledgment to amount to a promise to pay, did not apply to the case. Secondly, an acknowledgment will not start time running again unless it is made to the creditor or his agent, and in *Re Beavan, Davies, Banks & Co.* v. *Beavan*, [1912] 1 Ch. 196; 81 L. J. Ch. 113, it was held that any acknowledgment which an Inland Revenue affidavit could be said to contain was an acknowledgment not to the creditor but to the Court and to nobody else. Bennett, J., consequently held that there was no sufficient acknowledgment.

One difficulty in this decision which was pointed out at (1942) 58 L. Q. R. 461, has now engaged the attention of the Court of Appeal. Some of the books state that the operation of the Statutes of Limitation is suspended while the person to sue and the person to be sued are the same : see *e.g.*, *Lightwood, The Time Limit on Actions* (1909), p. 207; *Preston & Newsom, Limitation of Actions* (1940), p. 8. The principal authority cited in support of this is *Seagram* v. *Knight* (1867), 2 Ch. App. 628; 36 L. J. Ch. 918, where it was held that the running of the statutes was suspended as soon as a debtor took out administration to his creditor's estate. In the *Bowring-Hanbury Case* the position was the reverse, for the creditor was granted probate to the debtor's estate. Nevertheless, if the principle stated by the books was sound, it seemed that the sufficiency of the acknowledgment was irrelevant and that Bennett, J., should have held that the debt was not barred for a reason which apparently was not brought to his notice. It appears that the force of this argument was appreciated by the parties concerned some time later, for after the time for appeal had elapsed, special leave to appeal was obtained, and the case was taken to the Court of Appeal : [1943] 1 All E. R. 48; 112 L. J. Ch. 37. The Court of Appeal first approved the decision of Bennett, J., on the insufficiency of the affidavit as an acknowledgment, and then proceeded to consider at length the argument based on *Seagram* v. *Knight*.

The general rule is that once time has started to run, nothing will stop it (*Prideaux* v. *Webber* (1661), 1 Lev. 31), but as the Court of Appeal regarded itself bound by *Seagram* v. *Knight*, which was a decision of Lord Chelmsford, it became necessary to consider whether *Seagram* v. *Knight* laid down any general principle which applied to the *Bowring-Hanbury Case* or whether it could be distinguished. The Court of Appeal took the latter view. Lord Clauson, who delivered the judgment of the Court, founded the distinction upon Lord Chelmsford's treatment of *Rhodes* v. *Smethurst* (1838), 4 M. & W. 42, which, like the *Bowring-Hanbury Case*, concerned a creditor who became the executor of his debtor, the Court of Exchequer holding that the running of time was not suspended. *Rhodes* v. *Smethurst* was called to the attention of Lord Chelmsford only after he had delivered his judgment, and according to the *Law Reports*, " The Lord Chancellor said that, in *Rhodes* v. *Smethurst*, the creditor, not the debtor, was the executor " (2 Ch. App., at p. 633). Lord Clauson read this as a disclaimer by Lord Chelmsford of any intent to overrule *Rhodes* v. *Smethurst*, so that *Seagram* v. *Knight* became an authority against, and not in favour of, the interruption of the running of time in the *Bowring-Hanbury Case*. Unfortunately, however, the attention of the Court of Appeal does not seem to have been drawn to the version of *Seagram* v. *Knight* in the *Law Journal Reports*. According to this series, Lord Chelmsford's views on *Rhodes* v. *Smethurst* were these : " My attention was not called to that case. I certainly find there the following expression of Lord Abinger : ' Although this precise point may never have occurred, yet cases have arisen frequently, in actions both by and against executors, where for a portion of the time there was no such capacity of suing, and yet I

never heard of such a portion of time being subtracted from the six years. It appears to me that the general interpretation of the statute has been this, that where an action has once accrued, and the statute has begun to run, there being then a capacity of suing and of being sued, the statute continues to run'. That, however, was not the question to be decided in that case, and I can only say that, looking to those old cases in *Coke* and *Salkeld*, which I have already mentioned [*Nedham's Case* (1610), 8 Co. Rep. 135a, and *Wankford* v. *Wankford* (1704), 1 Salk. 299] it appears to me that if the remedy is suspended, the statute cannot possibly run during that period. I still entertain that opinion, although, perhaps, it is not so strong after the *obiter dictum* of Lord Abinger in that case. At the same time, I do feel it very strongly" (36 L. J. Ch. 918, at p. 921). This is strikingly different from the *Law Reports* version, and as it purports to be a *verbatim* report, it seems permissible to suppose that it is more accurate than the single sentence in *oratio obliqua* in the Law Reports. On this footing, the main basis of the Court of Appeal's decision in the *Bowring-Hanbury Case* is somewhat shaken, for the decision of Lord Chelmsford seems to have been based not on a narrow distinction between debtors and creditors, but on some wider principle.

With some hesitation it is suggested that the basis of the law as it now stands may be stated as follows :—

(a) A debtor becomes administrator : the running of time is suspended (*Seagram* v. *Knight*). There is no incentive for a man *qua* debtor to pay himself *qua* administrator.

(b) A debtor becomes executor : the question of limitation will not arise if the executor proves the will, for in the absence of a sufficient intention to forgive the debt, equity treats the debt as having been paid at the moment of the testator's death, and the executor is accountable as such for the amount of the debt as part of the testator's estate (*Ingle* v. *Richards* (No. 2) (1860) 28 Beav. 366). If the debtor fails to prove the will, it seems that time will continue to run (*ibid.*), which is reasonable because whoever has the administration of the estate committed to him may sue for the debt.

(c) A creditor becomes administrator : the position seems to be similar to (d) below.

(d) A creditor becomes executor : time continues to run (the *Bowring-Hanbury Case*). This is reasonable, for under the old law the executor might pay himself by exercising his right of retainer if the assets passing to him were sufficient, and he might sue the heir if they were not (*Wankford* v. *Wankford* (1704), 1 Salk. 299, at p. 304). The disappearance of the latter alternative to-day has not affected the validity of the former : see generally *Williams, Executors* (12th ed., 1930), pp. 854—859; *Seagram* v. *Knight* is not referred to and there are some complexities which cannot be explored here.

The reason for the difference between (a) and (b) seems to be historical rather than rational. At law, the appointment of a debtor as executor operated to discharge the debt, but equity compelled the

debtor to account for the debt *qua* executor. The rule at law did not apply to a debtor-administrator, for his representation was imposed upon him by the law and not the testator, and the equitable rule, not being needed to avert the rigours of the law, does not seem to have been applied. There is much to be said in favour of abolishing the rule in *Seagram* v. *Knight* and establishing a uniform rule that the running of time is never suspended. The position would be one of both justice and simplicity if an administrator, like an executor, were to be made accountable for his debts to the deceased as if the money had been in his hands *qua* personal representative, and if the point ever reaches the House of Lords it is to be hoped that matters will be established on this basis.

Will—protective trusts—beneficiary becomes enemy—income payable to Custodian of Enemy Property—whether beneficiary's interest had determined.—Those who criticised the Legislature for making it impossible to impose restraints upon anticipation and thus leaving the protection of married women to such devices as protective trusts (see *e.g.* 2 K. & E. 553, 554) have now been provided with fresh ammunition by the decision in *Re Gourju's Will Trusts*, *Starling* v. *Custodian of Enemy Property*, [1943] Ch. 24. A testator left property to his widow for life on the protective trusts set out in the Trustee Act, 1925, s. 33. The widow lived in Nice, and on July 10, 1940, she became an enemy for the purposes of the Trading with the Enemy Act, 1939. The income of the trust property thereupon became payable to the Custodian of Enemy Property by virtue of an Order made under that Act, and the question arose whether the widow's interest under the protective trust had determined. Under the Trustee Act, 1925, the income under a protective trust is payable to the beneficiary "until any event happens . . . whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part thereof". Simonds, J., was unable to avoid reaching the conclusion that an event had happened whereby the widow had been deprived of the right to receive the income within the meaning of the Act, so that her interest under the trust had come to an end. The income was clearly payable to the Custodian and he could not be said to receive it as agent for the widow; cf. cases such as *Re Tancred's Settlement*, [1903] 1 Ch. 715, and *Re Swannell* (1909), 101 L. T. 76, reviewed in *Re Baring's Settlement Trusts*, [1940] Ch. 737, where the income became payable merely to attorneys for the beneficiary. "It was urged upon me by counsel for Madame Gourju that the result of such a decision is a forfeiture by reason of an event which can never have been contemplated by the testator, an event, moreover, of a wholly different character from any event within his contemplation. With that I cannot but agree, but the words of the clause are too strong for me, and I can only express the

earnest hope that in the welter of legislation that peace will bring, the hard case will not be forgotten of a beneficiary who, like Madame Gourju, suffers an undeserved forfeiture of her income" (p. 30).

Further questions arose concerning sums of approximately £100 and £3,000; the former sum had accrued due and become payable before July 10, 1940, and the latter was the apportioned part up to that date of a larger sum which became payable after that date. The learned Judge referred to *Re Sampson*, *Sampson* v. *Sampson*, [1896] 1 Ch. 630; *Re Greenwood*, *Sutcliffe* v. *Gledhill*, [1901] 1 Ch. 887, and *Re Jenkins*, *Williams* v. *Jenkins*, [1915] 1 Ch. 46 (see also *Re Clark*, *Clark* v. *Clark*, [1926] Ch. 833), and held that these decisions applied to the statutory protective trusts; this made it clear that the Custodian was entitled to the smaller sum, since there had been no forfeiture of the widow's interest in it, but that the larger sum was payable not to the Custodian but to those entitled under the trusts arising on the determination of the widow's interest. The basis of the decision on the latter point is that the destination of each instalment of income is to be determined at the point of time when it becomes payable to the trustees, who need only fix their attention upon that moment and need not consider the various periods during which it has accrued; the Apportionment Act, 1870, does not operate so as to affect this principle. The reason for this rule was not stated, but it clearly seems a rule of convenience.

The final point concerned the duties of the trustees under the discretionary trusts arising on the determination of the widow's interest. It was asked whether they might retain all or part of the income and postpone the application of it as long as they thought fit or whether they were bound to spend in each year the income of that year for the purposes indicated in the Trustee Act, 1925, s. 33 (1). Simonds, J., said: "Following the decision of Eve, J., in *In re Peel*, [1936] Ch. 161, I come to the conclusion that the obligation of the trustees is to apply the trust income as and when they receive it for the purposes indicated in the sub-section, with, of course, such necessary limitations on absolute obligation as the practical necessities of the case demand. Putting it in a negative way, they are not entitled, regardless of the needs of the beneficiaries, to retain in their hands the income of the trust estate" (p. 34). It would scarcely suffice for practitioners merely to repeat these words to trustees who sought advice on the point; the first sentence indicates that the general obligation is to expend the whole of the income of each year on the beneficiaries, while the second suggests that such an obligation exists where the beneficiaries are in need of assistance but leaves the question open if they are not. However, *Re Peel* made it clear that the trust in that case obliged the trustees to apply the whole of each year's income and retain none, and since the opinion of Simonds, J., followed that case, it seems that *Re Gourju* may be taken as a decision that the position under the discretionary trusts of the Trustee Act, 1925, s. 33, is the same.

(2 K. & E., pp. 553, 554, 576 n. (*o*).)

3. *LANDLORD AND TENANT CASES.*

By LIONEL A. BLUNDELL, LL.M., BARRISTER-AT-LAW.

Rent refunded under mistake of law—Landlord and Tenant (War Damage) Acts, 1939 *and* 1941.—In *Sawyer* v. *Window Brace, Ltd.*, [1943] 59 T. L. R. 43, there was an interesting repercussion of the decision in *London Fan and Motor Co., Ltd.* v. *Silverman*, [1942] 58 T. L. R. 119, noted in *The Conveyancer*, Vol. 6, p. 215. By section 13 of the Landlord and Tenant (War Damage) (Amendment) Act, 1941, rent (including rent paid in advance) is apportionable as at the date from which a notice of disclaimer takes effect as a surrender (which is the date of the service of the notice); therefore, where rent has already been paid in advance that portion which is in respect of the period subsequent to the surrender can be recovered by the lessee.

This enactment, however, is not retrospective and does not apply to rent paid before August 7, 1941, the date when the Amendment Act came into force: *London Fan and Motor Co., Ltd.* v. *Silverman, supra.* Prior to this decision there was some uncertainty as to whether section 13 of the Amendment Act was retrospective or not. In *Sawyer* v. *Window Brace, Ltd.*, the case now under discussion, the damage occurred in October, 1940, rent having been paid in advance. Notice of disclaimer was served and duly took effect as a surrender. After the Amendment Act came into force on August 7, 1941, the lessees claimed repayment of the rent they had paid in respect of the period after the surrender. There was argument between the respective solicitors as to whether section 13 of the Amendment Act was retrospective. Ultimately the lessees' solicitors cited an opinion of counsel to the effect that the section was retrospective and threatened proceedings. The lessors then refunded the amount of rent in issue.

After the decision in *London Fan and Motor Co. Ltd.* v. *Silverman* the lessors' solicitors wrote asking for the return of the money which they had "paid . . . under threat of proceedings". The present action claimed the money back on that ground. It was conceded that the money was paid under a mistake of law, but it was said that the threat of legal proceedings had the effect of making the payment non-voluntary. Of course a voluntary payment made under a mistake of law cannot be recovered: *Henderson* v. *Folkestone Waterworks Co.*, (1885), 1 T. L. R. 329. But the lessors sought to found on *North* v. *Walthamstow U. D. C.* (1898), 15 T. L. R. 6, the argument that wherever money is paid under threat of legal proceedings, the payment is prevented from being a voluntary one. Croom-Johnson, J., rejected this view, holding that the payment is in such a case a voluntary one; he distinguished *North* v. *Walthamstow U. D. C.*, which was a case where the plaintiff, upon receipt of a notice and threat of proceedings, carried out repairs which he proved to be the liability of the defendants, and accordingly recovered their cost, which he had been obliged to pay. These were really quite different circumstances from those of the present case, and Croom-Johnson, J., refused to found on that case the much wider proposition

now put forward by the lessors. He referred to *Maskell* v. *Horner*, [1915] 3 K. B. 106, *Moore* v. *Fulham Vestry*, [1895] 1 K. B. 399, and *Marriott* v. *Hampton* (1797), 7 T. R. 269, and held that the payment was voluntary and irrecoverable, whether it was made before legal proceedings had been commenced or by way of settlement of a claim after proceedings had been instituted.

Moreover, the learned Judge was not satisfied that the money was actually paid as a result of the threat of proceedings; the admitted facts were equally consistent with the possibility that the payment was made because the lessors' solicitors were persuaded that the advice of the lessees' counsel was right in law.

The case is of some importance, as it deals with a kind of difficulty very likely to occur under the multitudinous emergency statutes, not only in relation to the Landord and Tenant (War Damage) Acts but in other departments of legislation where gaps in the earlier Acts have been subsequently made good by Amendment Acts.

(Woodfall, 24th edition, Supplement No. 3, p. 33.)

Rent Restrictions Acts—parsonage houses.—In *Bishop of Gloucester* v. *Cunnington* (1943), 59 T. L. R. 83, it has been held by the Court of Appeal that the Rent Restrictions Acts have no application to houses of residence belonging to ecclesiastical benefices.

The incumbent became a chaplain in the Royal Air Force and obtained a licence from the Bishop of Gloucester (in whose diocese the living was situate) to reside outside the benefice. He leased the vicarage to a sub-tenant for a term expiring one month after the termination of the war, with a proviso that the lease should cease in the event of the incumbent ceasing to be the incumbent of the living. This event occurred, the lessor being appointed to be Bishop of Madras. The Bishop of Gloucester now sought to obtain possession from the sub-tenant, who relied on the Rent Restrictions Acts.

There is, of course, no express provision in the Acts excluding a parsonage house from their operation, and such a house falls within the language of the Acts. There are, however, special statutes governing parsonage houses, in particular 21 Hen. 8, c. 13, and the Pluralities Act, 1838, which by section 32 requires every spiritual person holding a benefice to keep residence on the benefice and in the house of residence (if any) belonging thereto, subject to the Bishop's power under sections 33 and 43 to grant a licence to reside in some other house where there is "no house or no fit house of residence" belonging to the benefice; section 59 provides that any agreement for letting a parsonage house to which an incumbent may be ordered by the Bishop to proceed and reside therein, is to contain a condition for avoiding the same on a copy of the order being served on the occupier or left at the house (otherwise the agreement is void), and a remedy is provided against an occupier who fails to give up the house in such a case.

The Court of Appeal, in a judgment delivered by Lord Greene, M.R., held that the statutory provisions which were in force when the Rent Restrictions Acts were passed showed that parsonage houses are placed by the Legislature, for spiritual reasons, in a category by themselves. If the Rent Restrictions Acts apply they must impliedly have repealed the special legislation governing parsonage houses, in particular section 59 of the Pluralities Act enabling the tenant to be evicted when the Bishop orders the incumbent to reside in the house. The Court of Appeal took the view that it was impossible to think that any such implied repeal could have been intended, and cited *Seward* v. *Vera Cruz* (1884), 10 App. Cas. 59, where Lord Selborne, L.C., at p. 68 laid down that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, that earlier and special legislation is not to be held impliedly repealed merely by force of such general words, without any indication of a particular intention to do so. The Court of Appeal accordingly held that the Rent Restrictions Acts do not apply to houses of residence belonging to ecclesiastical benefices.

(Woodfall, 24th edition, pp. 105, 346.)

Lease of part of larger premises where sprinkler system installed—accidental escape of water—no liability under covenant to repair exterior or under rule in Rylands v. *Fletcher—construction of covenant to repair "exterior".*—In *Peters* v. *Prince of Wales Theatre (Birmingham), Ltd.*, [1943] 1 K. B. 73, C. A., there was a lease of shop premises in a building which contained a theatre and a rehearsal room, the lessors covenanting to keep the exterior of the demised premises in good and tenantable repair and condition. When the lease was granted the lessee knew that a sprinkler system was installed both in the rehearsal room (which was above his shop) and also in the shop.

An exceptionally severe frost caused the sprinklers to burst in the rehearsal room; water percolated into the shop and damaged the lessee's stock.

It was held by the Court of Appeal that, in the first place, there was no breach of the lessors' covenant to keep the exterior of the demised premises in repair. "The exterior of the demised premises" was construed by the Court (consisting of Scott, Mackinnon and Goddard, L.JJ.) as meaning every exterior part of the demised premises, excluding therefore what is not demised. The sprinklers which burst were no part of the exterior of the demised premises, and therefore there was no liability in covenant.

The Court then considered the question of the application of the doctrine of *Rylands* v. *Fletcher* (1868), L. R. 3 H. L. 330, to the present case, and enunciated the principle that where a lessee takes a lease of part of a building, knowing of the installation in the building of the apparatus which has subsequently given rise to the damage, he

impliedly consents to the presence of that installation and has no claim in respect thereof under the doctrine of *Rylands* v. *Fletcher*. He takes the place as he finds it, for better or for worse. The Court of Appeal cited as authorities for this proposition *Carstairs* v. *Taylor*, L. R. 6 Ex. 217 (particularly the decision of Martin, B., that one who takes a floor in a house must be held to take the premises as they are and cannot complain that the house was not constructed differently); *Ross* v *Fedden*, L. R. 3 H. L. 330 (following the decision of Martin, B., *supra*); *Anderson* v. *Oppenheimer* (1880), 5 Q. B. D. 602; *Blake* v. *Woolf*, [1898] 2 Q. B. 426; *Rickards* v. *Lothian*, [1913] A. C. 263; and *Kiddle* v. *City Business Properties, Ltd.*, [1942] 1 K. B. 269. Other cases referred to were *Nichols* v. *Marsland* (1876), 2 Ex. D. 1; *Humphries* v. *Cousins* (1877), 2 C. P. D. 239 (where the plaintiff succeeded because the parties were *adjoining owners*); *Thomas* v. *Lewis*, [1937] 1 All E. R. 137 (where the plaintiff succeeded with regard to land which he occupied as adjoining owner, and failed with regard to the adjacent land which he rented as tenant); and *Western Engraving Co.* v. *Film Laboratories, Ltd.*, [1936] 1 All E. R. 106 (where it did not appear whether the water system, a defect of which caused the damage, was installed at the time the plaintiffs became tenants).

Applying the principle thus enunciated, the plaintiff failed in the present case. It is important to note that the Court founded its decision upon the basis of implied consent, not upon the narrower ground of common benefit; it would certainly seem that in such a case the installation was actually for the common benefit of all tenants in the building, any of whom might have suffered from a fire in the theatre portion. The Court made it clear, however, that they rested their decision on the wider ground of implied consent. In view of the great frequency, at the present day, of leases of parts of buildings (both for residential and trade and professional purposes) where installations of one kind and another are known to be in use in the building, the case is a very important one. It may suggest in some cases the drawing of a special covenant to protect the lessee from possible damage arising out of an apparatus installed in another part of the building.

(Woodfall, 24th edition, pp. 636, 712.)

Fixtures—machines not fixed to the freehold, but attached to driving apparatus which was affixed to the freehold.—Hulme v. *Brigham* (1942), 59 T. L. R. 109, was a receivership case, but the point regarding fixtures upon which the case turned is equally applicable to landlord and tenant.

Machines were not in any way fixed to the freehold, but stood stable by their own weight. The driving apparatus was, however, affixed to the freehold at several points, and portions of the driving apparatus were affixed to the machines. It was held by Birkett, J., that the machines were not fixtures but retained their chattel nature.

This is clearly in accordance with the authorities, which require the

annexation of a chattel to the realty in some way, either by attachment to the soil or to something attached to the soil, as a building. The degree and object of the annexation must be such as to show that the article has lost its chattel nature and become part of the realty. The mere attachment of the driving mechanism to the realty, the machines themselves not being so attached, is not a sufficient annexation: *Northern Press and Engineering Co.* v. *Shepherd* (1908), 52 S. J. 715.

(Woodfall, 24th edition, p. 749.)

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4. *INCOME TAX CASES.*

By LEONARD STEIN, BARRISTER-AT-LAW.

Income tax—Schedule A—office building—cost of landlord's services to tenants—repairs to lift—Income Tax Act, 1918, *Schedule A, No. V, Rule 7, No. VII, Rule 8.—Pearl Assurance Co., Ltd.* v. *O'Callaghan*, [1942] 2 All E. R. 246, raised a point of some interest to owners of flats and other buildings "let in apartments or tenements" within the meaning of Rule 8 of No. VII of Schedule A, which provides for the making of the assessment, in certain cases, upon the landlord instead of upon the occupier. The premises in question—an office building—were clearly within the rule, and it was not in dispute that the gross annual value must be arrived at on the basis of the aggregate rents received, less the cost of the tenant's rates borne by the landlords and the cost of services provided by them. The question at issue was whether, in computing the cost of services, the landlords were entitled to include the cost of repairs to the lift. The objection raised by the Crown was that the lift was part of the hereditament, that the landlords were entitled to the benefit of Rules 7 and 8 of No. V of Schedule A, and that consequently they would get a double deduction if they were allowed the cost of repairs to the lift in arriving at the gross annual value, from which they would then be entitled to deduct the statutory repairs allowance, with the right, under Rule 8, to lodge a maintenance claim if, on a five years' average, the actual cost of repairs exceeded the "authorised reduction". This contention was rejected by Macnaghten, J., who held that, it being common ground that the formula adopted for the ascertainment of gross annual value was correct, it was clear that the cost of services must include the cost of repairs to the lift, and that no valid argument to the contrary could be extracted from Rules 7 and 8 of No. V.

Surtax—income attributable to more than one year—Finance Acts, 1927, *s.* 34, 1936, *s.* 20 (1) *and* 1939, *s.* 14 (1).—The question before the Court in *Gollin* v. *C. I. R.*, 21 A. T. C. 125, arose out of the provisions of section 34 of the Finance Act, 1927, which affords a measure

of relief where the income (being income taxable by deduction) received from any assets in a given year would be attributable to a period of more than a year if it were deemed to have accrued from day to day. In any such case the taxpayer's surtax liability is to be adjusted by the Special Commissioners " so as to give such relief as may be just ", regard being had to all the circumstances and, in particular, to any liability or additional liability to surtax which would have arisen for any preceding year or years if the taxpayer's total income had been computed on the footing that the income from the assets concerned had accrued from day to day and been apportioned accordingly. There is little difficulty in applying these provisions in a simple case as (for example) the payment in one sum of several years' preference dividend. But in *Gollin* v. *C. I. R.*, above, the circumstances were peculiar. G and his wife held all the shares in a company formed in 1928 to handle their investments. The regular practice had been that in every year of assessment the company distributed by way of dividend substantially the whole of its income for the preceding year. Accordingly, G's total income for 1938–39 included the dividends paid in that year out of the company's income for 1937–38. But at this point section 14 of the Finance Act, 1939, intervened. The effect of that section (see sub-section (1)) is that, for the purposes of assessment to surtax for 1938–39 and subsequent years, the whole of the actual income of a privately controlled investment company is to be deemed to be the income of its members. Thus, G's total income for surtax purposes for 1938–39 included not only the dividends received in that year out of the company's 1937–38 income, but also, by virtue of the 1939 Act, the whole of the company's income for 1938–39. It was common ground that relief was claimable under section 34 of the 1927 Act, but a question of some difficulty arose as to the measure of relief. The Special Commissioners thought that justice would be done by allowing G the difference between (1) the surtax chargeable on the footing that the dividend received in 1938–39 formed part of G's total income for that year, and (2) the surtax chargeable on the footing that those dividends formed part of his total income for 1937–38. It was, however, pointed out on behalf of G that this was no solution of the problem, since he would only escape having two years' income included in his total income for 1938–39 at the cost of submitting to two years' income being included in his total income for 1937–38. The Crown did not support the Special Commissioners' decision, but contended that the proper measure of relief was the difference, and no more than the difference, between (1) the surtax chargeable on the dividends received in 1938–39 treated as the highest part of a total income including the notional income introduced into that year by virtue of the 1939 Act, and (2) the surtax chargeable on those dividends treated as the highest part of a total income exclusive of that notional income. Macnaghten, J., was not satisfied that this would give the taxpayer " such relief as would be just ". He took the view that the way to do justice was to compute the relief by reference to the amount of surtax which would be chargeable on the footing that commencing from 1928–29, when the company was formed, in each year

the dividends formed part of G's total income for the year to which they related and not for the year in which they were received, with the result that for each year there would be attributable to G one year's income and no more. With this expression of opinion the learned Judge allowed G's appeal and sent the case back to the Special Commissioners, the point of law decided being that, on the true construction of section 34 of the 1927 Act, the Commissioners were not precluded from taking a more liberal view of the relief which could be allowed than they had supposed to be permissible.

Income tax—annual sums paid out of capital—Income Tax Act, 1918—*General Rules—Rule* 21.—A line of well-known decisions including, in particular, *Brodie's Trustees* v. *C. I. R.*, 17 T. C. 432, has established the principle that because a payment is made out of capital it does not follow that it is not, for tax purposes, income in the hands of a recipient; the decisive question is not whether it came out of capital but whether it was received as income. A recent application of this principle is to be found in *Sir Arthur Jackson's Trustees* v. *C. I. R.*, [1942] T. R. 309. A testator had directed the trustees of his will to raise out of capital, in every year during the joint lives of his wife and his daughter, "the clear sum of £250 free of all deductions in respect of death duties of any kind, income tax, costs or otherwise", and to pay such sum to the daughter. The trustees duly complied with these directions. Assessments were made upon them under Rule 21 of the General Rules on the footing that the payments were within the category of "annual payments charged with tax under Schedule D". To this it was replied that the payments were not annual payments in the relevant sense, since they were not payments of income but of capital. In the light of the decided cases, Wrottesley, J., had no hesitation in rejecting this contention. That the payments were payments out of capital from the trustees' point of view was, of course, indisputable, but this in no way concluded the question whether they were capital receipts in the hands of the beneficiary. What the beneficiary was entitled to was a payment of £250 a year during the joint lives of herself and her mother. Apart from the irrelevant circumstance that the £250 came from the capital of the trust fund, there could be no clearer case of an annuity or annual payment having the character of income and chargeable with income tax under Case III of Schedule D.

Surtax—transfer of assets abroad—transfer and associated operation —Finance Act, 1936, *s.* 18.—In 1933 X transferred certain assets to an English company, A. The transfer was made for *bona fide* business reasons and not in connection with any tax avoidance scheme. Subsequently, company A transferred certain of the assets which it had acquired from X to a Canadian company, B. This was done with a

view to the avoidance of income tax. The relations between X, company A and company B are such that X is not in a position to dispute that he has " power to enjoy " the income of company B within the meaning of section 18 (3) of the Finance Act, 1936. Is it open to X to contend that, in spite of this, he is not assessable under section 18 for the reason that the rights by virtue of which he has " power to enjoy " have not been acquired by him by a transfer of assets either alone or in conjunction with an " associated operation ", but arise solely from an " associated operation ", *viz.*, the transaction between company A and company B? This was, in effect, the main question raised in *Corbett's Executors* v. *C. I. R.*, [1942] T. R. 273. It was summarily disposed of by Macnaghten, J., who answered it without hesitation in favour of the Crown. True as it was that the transfer by X to company A did not, of itself, give him any relevant rights, the rights by virtue of which X had " power to enjoy " the income of company B were attributable to the combined effect of two transactions, both of which were indispensable. It followed that X had, within the meaning of section 18, acquired these rights by a transfer of assets in conjunction with an " associated operation ". The taxpayer was equally unsuccessful in the further contention—based on the opening words of section 18—that an individual was not caught by the section unless (as was admittedly not the case here) he had made his transfer of assets with the intention of avoiding taxation. Once the requirements of section 18 (1) have been shown to be satisfied, there is no escape for the individual unless he can bring himself within the statutory exemption, which, both in its original and its amended form, requires him, in effect, to prove the innocent nature, not only of the original transfer, but also of any " associated operations ".

Surtax—transfer of assets abroad—dividend paid in debentures—Finance Act, 1936, *s.* 18.—In *Aykroyd* v. *C. I. R.*, [1942] 2 All E. R. 665, the material facts may be summarised, in a simplified form, as follows : X, a person ordinarily resident in the United Kingdom, had held common stock in an American trading company. He had transferred the stock to two Canadian companies, A and B. The common stock of these two companies was held by four other Canadian companies C, D, E and F. X admittedly had " power to enjoy " the income of these four companies within the meaning of section 18 of the Finance Act, 1936, which deals with transactions resulting in the transfer of income to persons abroad. The American company declared a dividend payable in debentures. The debentures were redeemable at the end of six years or, at the option of the company, at any time within that period at thirty days' notice. The appropriate issues of debentures were duly made to companies A and B. They, in turn, distributed to companies C, D, E and F a cash dividend representing, as to a part of it, the value of the debentures.

As already stated, X did not deny that he had " power to enjoy " the income of C, D, E and F. What he disputed was the inclusion in

that income of so much of the dividend received from A and B as represented the value of the debentures. His contention was based on the well-known decision in *C. I. R.* v. *Fisher's Executors*, 10 T. C. 302, where, applying the principles propounded in *C. I. R.* v. *Blott*, 8 T. C. 101, the House of Lords held that a bonus distribution by a company in the form of debenture stock was not income in the hands of the shareholders. It was argued that, since the debentures received by companies A and B must—in the light of that decision—be regarded as capital and not as income, it followed that, so far as it represented the value of those debentures, the dividend received from A and B by C, D, E and F ought not to be taken into account in computing the amount of income to be attributed to X by reason of his "power to enjoy". This reasoning started from the assumption that had X himself received the debentures in the United Kingdom, it would have followed from the decision in *C. I. R.* v. *Fisher's Executors*, above, that they were not to be treated as income in his hands. Macnaghten, J., was by no means satisfied that this assumption was correct. Looking closely at the speeches of the Law Lords in *Fisher's Case*, and especially at certain of Lord Cave's observations, he reached the conclusion that the mere fact that the distribution was made in debenture stock was not of itself conclusive; whether a distribution in the form of debenture stock (or debentures) was to be treated as capital or income in the hands of the shareholders seemed—he said—to depend in some measure on the prospect of redemption. The present case was distinguishable from *Fisher's Case* in that here the debentures were redeemable by the company at any time on giving thirty days' notice. "As I read Lord Cave's judgment," said the learned Judge, "he would have held that in such a case the debentures could not be regarded as capital." But even assuming, for the sake of argument, that the debentures here were, for tax purposes, on the same footing as the debenture stock in *Fisher's Case*, this would only be the first step in the argument. The fact remained that what companies C, D, E and F had received was not debentures but cash. Could it be said that if, in *Fisher's Case*, the company, having received debenture stock by way of a bonus distribution, had sold it on the market and distributed the proceeds by way of dividend in cash, that dividend would still not have been income in the hands of the shareholder? Answering that question in the negative, the learned Judge held that on this ground alone, apart from other considerations, the appeal must fail.

PRECEDENTS

Form 1.

War-Time Amalgamation of Two Partnership Businesses.*

THIS DEED OF PARTNERSHIP is made the —— day of —— 19— BETWEEN A of *etc.* of the first part B of *etc.* of the second part C of *etc.* of the third part and D of *etc.* of the fourth part

Parties.

WHEREAS:

Recitals:

(1) The said A and B have for some years carried on at —— a business as —— in partnership under a deed of partnership dated *etc.* (which partnership business is hereinafter called "A and B's Partnership") and the said C and D have for some years carried on at —— a business as —— in partnership under a deed of partnership dated *etc.* (which partnership business is hereinafter called "C and D's Partnership)

Existing partnerships;

(2) It has been agreed between the parties hereto that the businesses of A and B's Partnership and C and D's Partnership shall be amalgamated as hereinafter provided

Agreement amalgamat

NOW THIS DEED WITNESSETH and it is hereby agreed and declared as follows:—

1. A and B's Partnership and C and D's Partnership are hereby dissolved as from the —— day of —— 19—.

Dissolution of existing partnership

2. The said A, B, C and D hereby severally covenant with each other that they will become partners in the trade of —— in the name of —— for the term of —— years from the said —— day of —— 19— determinable as hereinafter provided.

Covenant enter into new partn ship.

3. (1) The partnership may be determined by three months' notice in writing given at any time within one year after the end of the war by the persons and in manner hereinafter specified

Power to determine end of wa

(2) The notice mentioned in the last preceding sub-clause hereof may be given by the said A and B jointly if both shall be partners at the date of the giving of such notice or by that one of them who shall then be a partner or alternatively by the said C and D jointly if both shall be partners at the date of giving such notice or by that one of them who shall then be a partner

(3) The expression "end of the war" shall for the purposes of this clause mean the date declared by His Majesty by Order in Council to be the date on which the emergency that was the occasion of the passing of the Courts (Emergency Powers) Act, 1939, came to an end.

* This and the two following forms were drafted by Mr. E. H. Bodkin, of Lincoln's Inn.

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4. The business of the partnership shall be carried on at —— aforesaid or at such other premises as the partners shall from time to time mutually agree upon (*a*).

5. (1) Capital accounts of the assets and liabilities of A and B's Partnership and C and D's Partnership respectively have been prepared for the purposes of this deed made up to the said —— day of —— 19— and have been agreed by the partners and copies thereof are set out in the Schedule hereto and it appears from such accounts that the net value of the assets of A and B's Partnership (including the book debts and the goodwill but excluding the lease of the said premises known as ——) after deducting or allowing for all liabilities whether present or prospective and making a proper allowance for debts estimated to be bad debts is the sum of £—— whereof the sum of £—— is the value of the chattels passing by delivery and the net value of the assets of C and D's Partnership (including the book debts and the goodwill and the lease of the said premises known as ——) after making similar deductions and allowances as in the case of A and B's Partnership is the sum of £—— whereof the sum of £—— is the value of the chattels passing by delivery

(2) The assets of A and B's Partnership (other than and except the said lease of the said premises known as ——) and the assets of C and D's Partnership shall respectively be held in trust for and become the property of the partnership and the said debts and liabilities of A and B's Partnership and C and D's Partnership shall respectively become debts and liabilities of the partnership as if they had been incurred by the partnership but subject (as regards the liabilities of the said A and B under the said lease of the said premises known as ——) to the provisions hereinafter contained

(3) The said C and D shall stand possessed of the said premises known as —— (which are vested in them for the residue of a term of —— years from the —— day of —— granted by a lease dated *etc.* at a yearly rent of £—— as joint tenants upon trust to sell the same and to stand possessed of the proceeds of sale upon trust for C and D's Partnership) IN TRUST for the partnership and shall be indemnified by the partnership against the payment of the rent reserved by and the observance and performance of the covenants on the lessee's part and the conditions therein reserved and contained

(4) The said A and B shall respectively be credited in the books of the partnership with the sums of £—— and £—— representing their shares and interests in the said sum of £—— representing the agreed value of such of the assets of A and B's Partnership as are being taken

(*a*) It is assumed in this Precedent that the business will be carried on in effect in continuation of C and D's business and on their premises and that A and B's stock-in-trade will be transferred there and their premises sold. As regards A and B's liabilities under their lease until sale, it appears reasonable that they should be assumed by the partnership, and since it will in most cases be in the interests of the partners that the lease should be sold as soon as possible C and D are not likely to be prejudiced by A and B's wish to retain it until after the war, unless, of course, the former have a specially valuable local goodwill. The provisions as to dissolution are of course intended to enable the partners to recommence their respective businesses after the war with as little interruption as possible.

over by the partnership as aforesaid and the said C and D shall similarly be credited respectively with the sums of £—— and £—— representing their shares and interests in the said sum of £—— representing the agreed value of the assets of C and D's Partnership (*b*)

(5) The chattels passing by delivery which belong to A and B's Partnership and C and D's Partnership respectively have been delivered to the partners

(6) The said premises known as —— (which are vested in the said A and B for the residue of a term of —— years from the —— day of —— granted by a lease dated *etc.* at a yearly rent of £—— as joint tenants upon trust to sell the same and to stand possessed of the proceeds of sale upon trust for A and B's Partnership) shall not belong to or be assets of the partnership but the said A and B shall nevertheless be indemnified by the partnership *etc.* [*as in sub-clause* (3)]

(7) Any further capital which may be required shall (subject to any agreement to the contrary) be provided by the partners in equal shares

(8) Each partner shall be credited in the books of the partnership with interest at the rate of £—— per cent. per annum on his share of the capital for the time being and such interest shall be paid to him on the —— day of —— in every year before any division of profits is made.

Profits and losses.

6. (1) All outgoings of whatever kind and expenses incurred in carrying on the said business or in any wise relating thereto (including any expenses incurred under the provisions hereinbefore contained for indemnifying the said A and B and C and D against their respective liabilities under the said leases) shall be charged against revenue in the profit and loss account of the partnership and any deficiency appearing from that account shall be borne by the partners in equal shares and shall be debited in their respective capital accounts accordingly

(2) The partners shall be entitled to the net profits of the business in equal shares and the net profits shall be divided between the partners immediately after the settlement of the annual general account in each year.

Bankers.

7. (1) The bankers of the partnership shall be —— or such other bankers as the partners shall from time to time determine and all moneys and securities belonging to the partnership except such moneys as are required for current expenses shall be paid into and deposited with the said bank

(2) All cheques bills and other writings pledging the credit or affecting the property of the firm shall be signed by one of the partners and not otherwise.

Drawings.

8. The partners shall be at liberty by monthly drawings or otherwise to draw out of the said business in anticipation of their respective shares of profits and to be accounted for at the next yearly division of profits the following sums namely the said A sums not exceeding £—— the said B sums not exceeding £—— the said C *etc.* and the said D *etc.* during any quarter of a year but if in any year the amount so drawn out by

(*b*) These shares will depend on the capital repayable to the partners and the proportion in which they are entitled to the profits. If the assets are not liquid the effect may be to capitalise undrawn profits.

any partner shall on taking the general account be found to be in excess of his share of the net profits then immediately after such account shall have been taken and settled the excess so drawn out shall be refunded without interest.

Accounts and audit.

9. (1) Proper books of account shall be kept by the partners and entries made therein of all such matters transactions and things as are usually entered in books of account kept by persons engaged in concerns of a similar nature The said books of account and all letters papers and documents belonging to the firm shall be kept at the principal place of business of the partnership and each partner shall at all times have free access by himself or his agent to examine and copy the same

(2) On the —— day of —— and on every subsequent —— day of —— a general account shall be taken of the assets and liabilities of the partnership and of all dealings and transactions of the partnership during the then preceding year (or in the case of the first of such accounts since the commencement of the partnership) and of all matters and things usually comprehended in accounts of a like nature taken by persons engaged in a like business and in taking such account a just valuation shall be made of all items requiring valuation Such general account shall be entered in a book which shall be signed by the partners and when so signed shall be binding on them save that if any manifest error shall be found therein and signified by any partner to the other partners within —— calendar months after such signature the same shall be rectified.

Restrictions on acts of partners.

10. No partner shall without the consent in writing of the other partners:—

(i) Carry on or be concerned or interested directly or indirectly in the business of —— except on account and for the benefit of the partnership nor engage in or undertake any other trade business or manufacture

(ii) Become bail surety or security for any person or corporation nor do nor knowingly suffer anything whereby the property of the partnership may be seized attached or taken in execution

(iii) Assign or mortgage his share or interest in the partnership

(iv) Draw accept or sign any bill of exchange or promissory note or contract any debt on account of the partnership or employ any of the moneys or effects thereof or in any manner pledge the credit thereof except in the usual and regular course of business

(v) Buy order or contract for any real or leasehold property or for any goods or articles for the use of the firm exceeding the value of £——

(vi) Hire or except in case of gross misconduct dismiss any clerk traveller or person in the employment of the partnership or take any apprentice.

Power to determine if no profits.

11. If in any year the annual account shall show that in the financial year to which such account relates the business has (after crediting the partners with interest on their capital as hereinbefore provided) produced no profits any partner may by giving three months' notice in writing to the other partners determine the partnership.

On dissolution by death, etc., of one partner, continuing partner to have option to purchase his share.

12. (1) If the partnership shall be dissolved by the death or bankruptcy of a partner or consequent upon his suffering his share to be charged for his separate debt under the Partnership Act 1890 or is dissolved by the Court by reason of his lunacy incapacity or misconduct the other partner or partners as the case may be shall have the option to be exercised within three months of such dissolution by notice in writing to such deceased or outgoing partner or his representatives of purchasing (if more than one in shares proportionate to their then shares in the profits of the partnership) as from the date of such dissolution the share in the assets of the partnership (including the goodwill and capital) of the deceased or outgoing partner

(2) The purchase-money for the share of a partner whose share is purchased under the option hereinbefore contained shall be the amount of such share in the capital of the partnership as shown in his capital account with the partnership made up if the partnership shall have been continued for a year or more to the only or last day for taking the annual general account up to which the same shall have been continued together with interest in lieu of profits at the rate of £—— per cent. per annum up to the date of the dissolution for any period of less than a year not covered by such capital account but subject to the deduction of all sums drawn by the outgoing partner on account of profits during the then current year of the partnership (*c*)

(3) The outgoing partner or his representatives shall be bound by the general account from which such capital account shall be made up as aforesaid

(4) The purchase-money shall be payable as to so much thereof as shall represent profits upon the exercise of the said option and as to so much thereof as shall represent capital by —— equal instalments at intervals of —— calendar months (the first to be paid at the expiration of —— calendar months from the date of the dissolution) with interest at the rate of £—— per cent. per annum on the amount thereof for the time being unpaid.

(5) The partner or partners exercising the option shall secure the payment of the purchase-money to the outgoing partner or his representatives by deed of covenant and shall indemnify (if more than one jointly and severally) the outgoing partner or his estate from all liabilities of the partnership.

(6) The outgoing partner or his representatives shall do all such acts and execute all such assurances as may be necessary for vesting in the partner or partners exercising the option the assets (including the goodwill) and property of the partnership at the date of the dissolution.

Provisions as to dissolution by notice.

13. (1) If the partnership shall be determined by reason of a notice (whether under clause 3 or 11 hereof) the said C and D if both shall be partners at the date of determination or that one of them who shall then be a partner shall (whether or not they or he shall be the persons or person giving such notice) have the option to be exercised within

(*c*) It is often fairer to provide for the value of the share to be ascertained under the Arbitration Clause.

three months of such determination by notice in writing to be given to the said A and B if they shall both be partners at the date of such determination or that one of them who shall then be a partner of purchasing the shares or share of the said A and B or that one of them who shall be a partner as the case may be in the assets of the partnership (including the capital and goodwill) such purchased share or shares in case the said C and D jointly shall be the purchasers to be purchased by them in shares proportionate to their then shares in the profits of the partnership PROVIDED that if the said last-mentioned option shall not be exercised within the time hereby fixed the said A and B if both shall be partners at the date of determination of the partnership or that one of them who shall then be a partner shall have a similar option to be exercised within three months of the date of the expiration of such last-mentioned option of purchasing the shares or share of the said C and D or that one of them who shall be a partner at the date of such determination in the assets of the partnership (including the capital and goodwill).

(2) The purchase-money or aggregate purchase-money for any shares or share purchased under any of the options lastly hereinbefore contained shall be ascertained and paid and the purchaser or purchasers shall indemnify and if more than one jointly and severally the other partners or partner in like manner as is provided in clause 12 hereof.

f options to e exercised artnership be wound p under artnership ct.

14. Subject to the provisions hereinbefore contained the partnership shall on dissolution be wound up as provided by the Partnership Act 1890.

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15. No outgoing partner shall carry on or be concerned or interested whether directly or indirectly in any business of a similar nature to that carried on by the partnership within a radius of —— miles from the principal place of business of the partnership at the date when he shall so cease to be a partner (*d*) PROVIDED that this prohibition shall not apply if the partnership shall be dissolved by notice under clause 3 or 11 hereof and any of the options hereinbefore conferred in that event shall be exercised and the said A and B or either of them or the said C and D or either of them as the case may be may in such event respectively use the trade name of A and B's Partnership or C and D's Partnership and solicit any customer who was formerly a customer of A and B's Partnership or C and D's Partnership respectively but shall not solicit any other customer of the partnership (*d*).

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16. Any notice hereby authorised or required to be given to the partners or any of them shall be sufficiently given by leaving the same addressed to them or him at the principal place of business of the partnership.

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17. If during the continuance of the partnership or at any time afterwards any dispute difference or question shall arise between the partners or their or any of their representatives touching the partnership or the accounts or transactions thereof or the dissolution or winding up thereof or the construction meaning or effect of this deed or anything

(*d*) If the former businesses were too far distant to compete with each other the proviso may be omitted.

herein contained or the rights and liabilities of the partners or their representatives under this deed or otherwise in relation to the premises then every such dispute difference or question shall be referred to two arbitrators one to be appointed by each party or their umpire pursuant to the Arbitration Acts 1889—1934 or any statutory modification or re-enactment thereof for the time being in force.

IN WITNESS *etc.*

THE SCHEDULE ABOVE REFERRED TO.

[*This will contain capital accounts of A and B's Partnership and C and D's Partnership.*]

Form 2.

War-Time Amalgamation of Two Firms of Solicitors.

THIS DEED OF PARTNERSHIP is made the —— day of —— 19— BETWEEN A of *etc.* of the first part B of *etc.* of the second part C of *etc.* of the third part and D of *etc.* of the fourth part — Parties.

WHEREAS [*Recitals—as in last form*] — Recitals.

NOW THIS DEED WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows:—

1. [*Dissolution of subsisting partnerships.*]
2. [*Covenant to enter into new partnership.*]
3. [*Power to determine partnership at end of the war.*]
4. [*Place of business.*]

See clauses 1—4 of last form.

5. (1) The capital of the partnership shall be the sum of £—— which shall be contributed by and credited in the books of the partnership as belonging to the partners in the following shares namely:— — Provisions as to capita and assets partnership

(2) [*Declaration of trust of C and D's partnership premises—see clause 5 (3) of last form (a).*]

(3) The said last-mentioned leasehold premises shall be taken as being of the value of £—— and the office furniture books boxes safes and fittings therein (which have been delivered to the partners) shall become the property of the partnership and be taken as being of the value of £—— and the said C and D shall each be credited in the books of the partnership with the sum of £—— (being one moiety of the aggregate of the said sums of £—— and £——) as part of the capital contributed by them respectively (*b*)

(4) [*Indemnity to A and B in respect of their lease—see clause 5 (6) of last form.*]

(*a*) A formal declaration of trust in favour of the partnership will be necessary. See generally as to the scheme intended to be carried out by this partnership deed the notes to the last form.

(*b*) The share to be credited to each partner will of course depend on his share in the partnership assets of C and D's partnership.

(5) The said A and B shall assume the liabilities of A and B's partnership and shall indemnify the partnership against such liabilities and the said C and D shall in like manner assume the liabilities of C and D's partnership and indemnify the partnership against such liabilities

(6) [*Further capital.*]
(7) [*Interest on capital.*] } *See clause* 5 (7) *and* (8) *of last form.*

6. (1) and (2) [*Profits and losses—see clause* 6 (1) *and* (2) *of last form.*]

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(3) All premiums which shall be received with articled clerks and all fees emoluments and benefits which shall be received or derived by the partners or any of them while members or a member of the firm for services rendered or otherwise in respect of any office of profit or appointment (other than and except service in the armed forces or defence services) (*c*) held by them or any of them shall be treated and accounted for in the books of the partnership as profits of the partnership

rust usiness.

(4) If any partner shall be a trustee in any matter or business and shall not be entitled to act as solicitor in respect of the same either by himself or his firm and be paid as solicitor out of the trust estate or otherwise the other partner may act as such solicitor on his own account and the partner who is such trustee shall not be entitled to any share in the profit costs arising out of such business or matter

ppropria- on of book bts.

(5) Any moneys received for business transacted previously to or after the commencement of the partnership from clients indebted to A and B's partnership or C and D's partnership in respect of business transacted on behalf of such clients previously to the commencement of the partnership shall be appropriated and applied in the first instance in payment of the amount owing to A and B's partnership or C and D's partnership as the case may be in respect of such previously transacted business.

nkers.

7. (1) The bankers of the partnership shall be the —— Bank or such other bank as the partners shall from time to time determine and all moneys and securities belonging to the partnership except such moneys as are required for current expenses shall be paid into and deposited with the said bank to the credit of the general account of the partnership

(2) All moneys and securities for money received by the partners or any of them on behalf of or as the property of a client or third person (except such of the same as shall be required for the matter in hand on behalf of such client or third person) shall forthwith be paid or delivered to such client or third person or paid into and deposited with the bank to an account separate and distinct from any account relating to the property of the partnership

(3) All cheques shall be drawn in the firm name and may be so drawn by any partner.

8. [*Drawings—see clause* 8 *of last form.*]

ounts.

9. (1) Proper books of account shall be kept by the partners and entries made therein of all such matters transactions and things as are

(*c*) See *Carlyon-Britton* v. *Lumb*, 38 T. L. R. 298.

usually entered in books of account kept by solicitors including particulars of all attendances and professional business transacted by each partner and of all such names times and places as may be necessary or useful for the manifestation of the partnership business. The said books of account and all deeds securities letters papers and documents belonging to or relating to the partnership (except such as are to be kept at the bankers) shall be kept at the office of the partnership and each partner shall at all reasonable times have free access to examine and copy the same

(2) [*Annual account and audit—adapt clause* 9 (2) *of last form, providing for audit by a chartered accountant.*]

10. [*Restrictions on acts of partners.*]
11. [*Power to determine partnership if no profits. (A power to expel a partner, or for a partner to retire voluntarily, may be added if desired.)*]

See clauses 10 *and* 11 *of last form.*

12—14. [*Provisions as to dissolution—adapt clauses* 12—14 *of last form, providing that nothing, or a fixed sum, is to be payable in respect of goodwill (if any).*]

Provisions as to papers on dissolution.

15. On the dissolution of the partnership the deeds drafts and other papers relating to the business of the partnership (in this clause referred to as "the papers") shall unless the client or clients to whom the same belong objects be dealt with as follows:—

(a) If the partnership shall be determined by any of the means mentioned in clause 12 hereof and the continuing partners or partner shall exercise the option contained in such clause the papers shall remain in the hands of or be delivered to such continuing partners or partner

(b) If the partnership shall be determined by reason of notice (whether under clause 3 or 11 hereof) and any of the options hereinbefore conferred in that event shall be exercised such of the papers as relate to the business of clients whose business was prior to the commencement of the partnership attended to by any of the partners shall (but without prejudice to any lien of the partnership thereon) be delivered to such partner and the residue of the papers shall be delivered to the partners or partner exercising such option (*d*).

16. [*Covenant not to compete.*]
17. [*Notices.*]
18. [*Arbitration clause.*]

See clauses 15—17 *of last form.*

IN WITNESS, *etc.*

(*d*) The lien, though possessory, would apparently remain so long as the papers remained in the hands of a former partner, and he could be required to enforce it for the benefit of the partnership. As to the validity of the above provisions, see *Whittaker* v. *Howe*, 3 B. 383.

Form 3.

Agreement under Seal between Solicitor Called Up for War Service and Another Firm to Carry on his Practice During his Absence.

Parties.

THIS DEED is made the —— day of —— 19— BETWEEN A of *etc.* solicitor (hereinafter called "the Principal") of the one part and B and C practising in co-partnership together as solicitors at —— under the name or style of B & Co. (hereinafter called "the Agents") of the other part

Recitals:

WHEREAS—

Principal's practice;

(1) The Principal has up to the date hereof carried on practice as a solicitor at —— aforesaid

Principal called up for service and desire to appoint Agents;

(2) The Principal has been called up for military service and is desirous that the Agents shall during his absence on such service carry on his said practice on his behalf which they have agreed to do in manner and upon the terms hereinafter appearing

Delivery of papers to Agents:

(3) The deeds documents and other papers relating to the said business of the Principal (other than those deposited with the —— Bank as the bankers of the said business) have been handed over to the Agents

Now in pursuance of the said agreement and in consideration of the premises THIS DEED WITNESSETH and IT IS HEREBY AGREED AND DECLARED as follows:—

Agents to carry on practice.

1. (1) The Agents shall attend to carry on and manage the said business of a solicitor heretofore carried on by the Principal including any incidental business of collecting rents and mortgage interest for and on behalf of clients or otherwise (all which business is included in the expression "the business") as the Principal has been accustomed to carry on the same for the term of —— years if the Principal shall so long live but determinable as hereinafter provided

(2) The Agents and each of them severally shall have full power to act in all respects in the conduct and management of the business as they or he may in their uncontrolled discretion think expedient and without being liable for any consequential loss but shall not without the consent in writing of the Principal discontinue or wind up the same.

Power of attorney to Agents.

2. For effectuating the purposes aforesaid the Principal hereby appoints the Agents jointly and severally to be his attorneys and attorney in his name and on his behalf to do or execute all or any of the acts and things following that is to say—

To draw cheques on banking accounts;

(a) To deposit money with to draw and endorse cheques drawn upon or to close or otherwise deal with the general account and clients' account of the business with the —— Bank and generally to deposit any money received by the Agents under or by virtue of this agreement with any banker broker or other person and to withdraw such money

To agree with clients as to remuneration;

(b) To agree with clients of the business as to remuneration for professional or other business (whether contentious or non-contentious) and whether such remuneration shall be less than or equal to the scale

allowed by the statutes and orders for the time being in force and to deliver and tax bills of costs

(c) To demand sue for enforce payment of and to receive and give effectual receipts and discharges for all fees costs money securities for money debts goods and chattels due payable or transferable to the Principal or the Agents in connection with the business which receipts (whether given in the names or name of the Agents or the Principal) shall exonerate the persons or person or corporation paying or transferring the same from seeing to the application thereof or being responsible for the loss or misapplication thereof

To give receipts;

(d) To adjust and settle all accounts and transactions and compromise or compound any debts or claims which may be owing by or to the Principal or be claimed or made against or on behalf of the Principal in relation to the business

To settle accounts;

(e) To do or execute any other act or thing which the Agents may do or execute in the exercise or purported exercise of the powers of management hereinbefore conferred And the Principal for himself his executors and administrators hereby agrees to ratify and confirm whatsoever the Agents shall do or purport to do by virtue of this power of attorney including in such confirmation anything which may be done between the time of the revocation of this power of attorney by the death of the Principal and the time and fact of such revocation being proved to the satisfaction of the Agents by an official certificate of the death of the Principal or otherwise.

Generally t do anything authorised by precedin powers.

Agreement to ratify.

3. The business shall be conducted and attended to by the Agents at —— aforesaid or any other office upon which the business of the said firm of B & Co. shall be carried on from time to time.

Business to be carried on at Agent offices.

4. The Agents shall pay the rent rates taxes and other outgoings in respect of the said premises at —— upon which the business was formerly carried on by the Principal and shall charge the same to the account of the business.

Agents to pay rent of Principals' office.

5. (1) The Agents shall keep the books of account of the business as the same have heretofore been kept by the Principal and shall enter therein particulars of all such matters transactions and things as are usually entered in books of account kept by solicitors including particulars of attendances and professional business and of all such names times and places as may be necessary or useful for the manifestation of the business

Agents to keep accounts.

(2) The Agents shall cause a general account of the assets and liabilities and showing the net profits of the business to be taken as heretofore on the —— day of —— in every year during the subsistence of this agreement Such general account shall be prepared and audited by —— or some other competent chartered accountant to be from time to time agreed upon between the Principal and the Agents and on being verified by the certificate of such accountant shall be binding and conclusive upon the Agents.

General account and audit.

6. The Agents shall be entitled by way of remuneration for their services hereunder to (a) such a sum as shall be equivalent to —— per cent. of the net profits (if any) of the business as shown by the said

Remuneration of Agents.

general account for each full financial year of the business during the subsistence of this agreement (b) such further sum in respect of the residue of the now current financial year of the business as shall represent a due proportion of the total net profits for such financial year as shown by the next general account to be taken by the Agents as hereinbefore provided and (c) if this agreement shall be determined by any means during the currency of a financial year of the business to such further sum as shall represent a due proportion of the estimated net profits for such financial year such net profits to be estimated as being equal to the net profits of the next preceding financial year as shown by the general account next before such determination.

Determination of agreement.

7. (1) This agreement shall be determined by the dissolution of the present partnership between the Agents and may be determined at any time by the Principal or the Agents by six months' notice in writing and upon such determination all deeds documents papers and books of account relating to the business shall be returned to the Principal

(2) The provisions of section 196 of the Law of Property Act, 1925, shall apply to such notices.

Agreement not to create a partnership.

8. Nothing herein contained shall—

(a) be construed as in any sense creating a partnership between the Principal and the Agents or as rendering the Agents subject to any of the liabilities of partners

(b) prejudice the rights of any client or clients in relation to the possession or custody of their deeds documents or papers whether during or at the determination of this agreement (*a*).

Arbitration clause.

9. Any and every dispute difference or question which shall at any time arise between the parties hereto or their respective representatives or any of them touching the construction meaning or effect of this agreement or any clause or thing herein contained or the rights or liabilities of the said parties respectively or their respective representatives or any of them under this agreement or otherwise howsoever in relation to the premises shall be referred to the arbitration of X or him failing of some other competent person to be named by the President of the Law Society.

In witness *etc.*

(*a*) The Principal will be liable to clients for the acts of the Agents, as in the case of a London Agent. A policy against mistakes would not cover mistakes of the Agents. Whether such an agreement as the present would be valid without the assent of the clients appears doubtful (see *Colgrave* v. *Manley*, T. & R. 400.) The relation of solicitor and client is generally that of principal and agent and the maxim *delegatus non potest delegare* would apply unless the arrangement could be justified by necessity. In any case notice of the arrangement would have to be given to the clients, and if they do not object their consent could be assumed. In contentious business consent in writing would appear advisable; the Agents would presumably be entered as solicitors on the record as agents for the Principal.

Form 4.

Agreement by a Medical Practitioner to Serve as an Assistant to Two Persons in Partnership for the Duration of the War, One Member of the Partnership being on Active Service (*a*).

AN AGREEMENT made the —— day of —— BETWEEN A of *etc.* and B of *etc.* of the one part and C of *etc.* of the other part Parties.

WHEREAS— Recitals.

(1) A and B have for some years past been carrying on the profession of surgeons and general medical practitioners in partnership at —— in the parish of —— in the county of ——

(2) B is about to become engaged in war service and will be unable to continue in practice at —— so long as he is so engaged

(3) C is a duly qualified and registered medical practitioner and is willing to serve A and B as their assistant upon the terms and conditions following that is to say:—

NOW IT IS HEREBY AGREED as follows:—

1. A and B hereby agree to engage C and C hereby agrees to enter into and continue in the service of A and B or the survivor of them as assistant in every branch of their profession practice and business of surgeons and physicians from the —— day of —— next (*b*) for the period of —— years (*c*) unless the said engagement of C is earlier terminated as hereinafter provided. Engagement.

2. The said C shall while he shall continue in the service of A and B or the survivor of them faithfully and diligently serve them or him as such assistant as aforesaid and devote his whole time to such service and at all times obey and comply with their or his lawful commands and directions in relation to the said business and practice and to the utmost of his skill and ability serve and promote the interests of A and B or the survivor of them and shall not at any time except in the case of sickness or unavoidable accident absent himself from their or his service without their or his consent and shall not without such consent divulge or disclose any of the secrets concerns or affairs of the said business or practice. Diligent service.

3. A and B or the survivor of them shall pay to C while he shall remain in their or his service and duly perform the agreements on his part herein contained a salary of £—— per annum and so in proportion for any less period than a year by equal quarterly [monthly] payments the first payment thereof to be made on the —— day of —— [and shall also pay to C at the end of each year during the continuance of his engagement such further sum as shall be equivalent to —— per cent. of the net profits of the business without any deductions Such last mentioned payment shall be calculated from the said —— day of —— in each year commencing from the said day of —— next and shall be Salary.

(*a*) If under hand, 6d.

(*b*) It is convenient to make the day fixed for the commencement of the term of service be the first day of the partnership year.

(*c*) Owing to the difficulty of deciding what is meant by "the duration of the war" it is generally advisable to make an agreement of this character for a definite term and then provide for its earlier determination by notice.

payable on the —— day of —— in the following year or as soon thereafter as the amount thereof shall have been ascertained in manner provided by the deed of partnership made the —— day of —— between A of the one part and B of the other part [*or* in accordance with the annual practice of A and B in taking the partnership accounts]] PROVIDED ALWAYS that upon the death or termination of the engagement of C before the expiration of the said period of —— years A and B shall forthwith pay to C or his executors or administrators as the case may be in respect of his services for the whole or any part of the then current year of the said period a due proportion of the said salary of £—— [together with such further sum in lieu of such percentage as aforesaid as shall represent a due proportion of a sum equivalent to —— per cent. of the estimated net profits of the then current year of the business such net profits to be estimated at a sum equal to the average net profits of the said business for the three years immediately preceding the then current year].

Board and lodging.

4. C shall also during the continuance of his engagement be provided by A and B with a suitable residence at —— or elsewhere free from rates and taxes [*or* with good and sufficient meat drink lodging washing and fuel and shall if required by A and B reside in the house in which the said business is now or shall for the time being be carried on and shall in that case have the use of —— rooms therein free from all rent rates and taxes in respect thereof].

Absence from unavoidable cause.

5. In case of the absence of C from the service of A and B or the survivor of them owing to sickness or other unavoidable cause during a continuous period of more than —— days A or B or the survivor of them may if they or he think fit appoint a substitute for C and may remunerate him out of the salary hereby provided for C.

6. C shall during the continuance of his engagement keep accounts of all receipts and payments made by him on behalf of the partnership and shall on the usual quarter days render an account of such receipts and payments to A and B and C shall also keep a record of all cases treated by him which record shall at all reasonable times be available for inspection by A and B.

Insurance.

7. C shall (*d*) during the continuance of his engagement take out and maintain in full force and effect a policy of insurance with the Medical Defence Union Ltd. or such other body as A and B may direct against all liability for negligence or any default or omission in carrying on his profession as a surgeon and general medical practitioner and will duly and punctually pay the premiums in respect thereof.

Termination of agreement.

8. The engagement of C may be terminated at any time after the expiration of three calendar months from the termination of the war (*e*)

(*d*) In many cases the insurance policy of the firm will cover any assistant, but if there is any doubt as to the position the safest course is for the assistant also to insure.

(*e*) In the absence of any definition of what is meant by the "termination of the war" it may be assumed that the date will be fixed by Order in Council. In the last war the Termination of the Present War (Definition) Act, 1918, empowered His Majesty by Order in Council to fix the date for the termination of the war and the date so fixed was to apply, except where the context otherwise required, to provisions in all contracts, deeds and other instruments referring expressly or impliedly and in whatever form of words to the war or to the hostilities. The date ultimately so fixed was August 31,

by either party giving to the other party —— calendar months' notice in writing and the engagement of C may also be terminated after B shall cease to be engaged in war service by A and B or the survivor of them giving to C —— calendar months' notice in writing expiring at any time and the engagement of C shall also cease *ipso facto* and without previous notice in the event of the dissolution at any time of the partnership of A and B otherwise than by death (*f*).

Not to practice in district.

9. C shall not (*g*) at any time while he shall remain in the service of A and B or either of them or within —— years after he shall have left such service follow use or carry on at —— aforesaid or within —— miles thereof the profession practice or business of a physician or surgeon either in his own name or in the name or names of any other person or persons and either directly or indirectly and shall not during such period enter into the service of any person or persons other than A and B or one of them as assistant or otherwise in or in relation to any such profession practice or business as aforesaid within the limits aforesaid and shall not during the period aforesaid endeavour or attempt directly or indirectly to induce any person or persons to cease from employing A and B or either of them in the way of their or his profession practice or business or to induce any person or persons within the limits aforesaid so to employ any person or persons other than A and B or one of them.

Agreement not to create a partnership.

10. Nothing herein contained shall be construed as in any sense creating a partnership between A and B and C or as giving to C any of the rights or rendering him subject to any of the liabilities of a partner [except such a right to an account of the net profits as shall be necessary for the purpose of ascertaining the amount of any further sum payable to him as aforesaid in case such amount shall not be ascertained and verified in manner aforesaid].

As WITNESS *etc.*

1921. A similar procedure will presumably be adopted in the case of the present war. It seems impossible to give any helpful definition of the meaning of the phrase which would cover even the more probable possibilities. However, if the agreement is for a fixed term and there is power to determine earlier should the partner on war service be demobilised, there is no objection to leaving the meaning of the phrase to depend on the construction ultimately put upon it by statute.

(*f*) In the absence of any expression of a contrary intention the death or retirement of a partner or other change in the constitution of the firm would operate to determine the agreement: *Tasker* v. *Shepherd*, 6 H. & N. 575; *Phillips* v. *Alhambra Palace Co.*, [1901] 1 Q. B. 59. Where the contract is made expressly determinable without notice on a change in the constitution of the firm, determination upon the happening of such an event is in accordance with and not against the terms of the contract and cannot operate as a wrongful dismissal.

(*g*) The benefit of the covenants enures to the covenantees jointly and severally: *Palmer* v. *Mallet*, 36 Ch. D. 411. The covenant must be reasonable with reference to the interests of both parties, the restraint not being more than is reasonably necessary to protect the business of the covenantees.

Form 5.

Licence to Use Land for Growing Vegetables, etc. (*a*) (*b*).

THIS AGREEMENT is made between —— of —— in the county of —— (hereinafter called "the Owners") of the one part and —— of *etc.* (hereinafter called "the Licensee") of the other part.

1. The Licensee shall have the right but without making any payment in consideration thereof to the Owners between the hours of [sunrise] and [sunset] of entering and being upon the Owners' premises situate at —— but only for the purpose of making use of the garden of the said premises for growing vegetables.

2. The keys of the said premises shall be retained by the Owners and shall be kept at —— and the Licensee shall call at —— for the said keys on each occasion on which he desires to enter the said premises for the said purpose and shall return the keys to —— upon the leaving the said premises on each such occasion.

3. The Licensee shall first obtain the written approval of the Owners before digging up or commencing to cultivate any part of the said garden.

4. The Licensee shall not erect any shed or other erection on the said garden or on any part of the said premises without the consent in writing of the owners [but shall be entitled to use the garden shed for the purpose only of storing gardening tools and implements].

5. The Licensee shall not make or cause or permit to be made the said garden or any part of the said premises dirty or untidy.

6. The Licensee shall pay or alternatively indemnify the Owners in respect of any outgoings or other charges which might at any time become payable by reason of any user as aforesaid of the said premises by the Licensee.

7. The Licensee shall not cause or permit to be caused any nuisance or annoyance to adjoining occupiers or third persons.

8. The Licensee shall be liable to the Owners for any damage to any part of the said premises or in respect of which the Owners may be held liable to third parties where such damage is caused by the wilful act, neglect or default of the Licensee or any other person who might be on the said premises at the invitation express or implied of the Licensee.

9. This Licence shall not be assignable.

10. This Licence shall be determinable by the Owners at any time upon giving [two weeks'] notice to the Licensee and upon the expiry of the said notice the Licensee shall not be entitled thereafter to enter on the said premises for the purpose of removing any of the vegetables grown by him or for any other purpose.

IN WITNESS *etc.*

(*a*) This form was drafted by T. J. Sophian, of the Inner Temple.

(*b*) With a view to assisting in the production of more food, many owners have thrown open unused land for the growth of vegetables and fruit, in some cases entirely without charge. Owners who are desirous of assisting in this manner in the war effort should at the same time protect themselves by ensuring that rights under the Allotments Act, 1922, do not accrue to the person cultivating the land. The safest course to take for this purpose is to grant a licence and to avoid creating a tenancy.

Form 6.

Deed by Executor of a Vendor where the Conveyance by the Vendor has been Destroyed by Enemy Action, the Completed Draft Being set out in a Schedule (*a*).

THIS DEED is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Executor") of the one part and B of *etc.* (hereinafter called "the Purchaser") of the other part.

WHEREAS:—

(i) In or about the month of —— 19— Z then of —— in the county of —— (hereinafter referred to as "the Vendor") agreed with the Purchaser for the sale to him of the piece of land and other premises described in the document set out in the Schedule hereto (hereinafter referred to as "the Scheduled draft") at the price of £—— and otherwise upon the terms in the said document expressed

(ii) By a Deed of Conveyance dated the day of —— 19— and made between the Vendor of the one part and the Purchaser of the other part the said land and hereditaments were in consideration of the sum of £—— then paid by the Purchaser to the Vendor (as the Executor hereby admits and acknowledges) conveyed to the Purchaser in fee simple subject as therein mentioned

(iii) The said Deed of Conveyance was executed by both parties and duly stamped and the Purchaser thereupon entered into possession of the said land

(iv) The Vendor died on the —— day of —— having made his will dated the —— day of —— whereby he appointed the Executor to be his sole executor and the said will was proved by the Executor on the —— day of —— in the —— Probate Registry

(v) The said Deed of Conveyance was in terms identical with those of a draft conveyance which had been settled between the parties and of which the Scheduled draft is a copy and the plan hereto attached is in all material respects identical with the plan drawn upon the said Deed of Conveyance

(*a*) Stamp 10s. The above is the most suitable form of document. A confirmatory conveyance by the executor would be inoperative as he has no interest in the land conveyed.

(vi) The said Deed of Conveyance was in the month of —— 19— destroyed by enemy action and the parties hereto have agreed to execute these presents for the purpose of preventing any future doubt or question as to the terms of the said conveyance or as to the rights or liabilities thereunder of the respective parties thereto or their respective successors in title

NOW THEREFORE in pursuance of the said agreement THIS DEED WITNESSETH that it is hereby agreed and declared that as between the Purchaser and his successors in title on the one hand and the Executor and other the successors in title of the vendor on the other hand these presents shall be conclusive evidence for all purposes in relation to the title to the said land and premises or to the enforcing of any right arising under the said conveyance of the —— day of —— 19— that the said Deed of Conveyance has been destroyed and that the terms and provisions thereof were identical with those contained in the Scheduled draft and that the said Deed was executed by both the parties thereto and was duly stamped and completed.

IN WITNESS *etc.*

THE SCHEDULE ABOVE REFERRED TO.

[*The Schedule will contain a full copy of the draft conveyance and the plan will be attached.*]

Form 7.

Rules of —— Firewatchers' Fund (*a*).

1. The Society is a benevolent society, composed of persons who at the time of joining are firewatchers in —— Road —— in the County of —— and members of their families.

2. The Society shall be called "—— Firewatchers' Fund".

3. Its office shall be Number — —— Road —— in the County of ——.

4. The Society is established for the benevolent or charitable purpose of helping members who have suffered financial losses by reason of bodily injury or of injury to or destruction of their household furniture and effects and clothing by fire explosions or blast due to enemy action and the Committee shall fix the amount

(*a*) This form was drafted by Messrs. T. A. Needham & Son, solicitors, of Manchester.

of the grant to be made to each member suffering any such injury and may if they think fit make a grant to the wife or family of a member whose death is due to enemy action.

5. All moneys received on account of contributions donations admissions or otherwise shall be applied towards carrying out the objects of the Society according to the rules thereof. Any officer misapplying the funds of the Society shall repay the same without prejudice to his liability to prosecution or suit for such misapplication.

6. Every person contributing to the funds a weekly sum of —— or of such other amount as the Committee shall from time to time appoint shall be a member so long as he continues such weekly contribution and is not more than four weeks in arrear with any contribution.

7. No fine or forfeiture shall be imposed on any member; but when a member's contribution for any week is not paid for the space of four weeks or if a member shall resign or die his membership shall cease and neither he nor his personal representatives shall thereafter have any claim against the Society or the funds thereof.

8. The annual meeting of the Society shall be held in the month of December in every year at such place as the Committee appoint. Seven days' notice shall be given by circular to every member.

9. A special meeting of the Society may be called at any time by the Committee and shall be called by them upon the requisition of ten members.

10. At every meeting of the Society five members shall form a quorum.

11. At every meeting of the Society the chairman or in his absence some other member of the Committee selected by the meeting shall preside.

12. On every question before a meeting of the Society every member present shall have one vote only.

13. Where the voting is equal the chairman of the meeting shall have a second or casting vote.

14. No new rule shall be made nor any of the rules herein contained or hereafter to be made shall be amended altered or rescinded except with the consent of a majority of the members

present at a meeting of the Society specially called for that purpose.

15. There shall be elected by a majority of the members present at the annual meeting of the Society a Committee consisting of seven persons a treasurer a secretary and two auditors. The Committee treasurer and secretary shall continue in office until the next annual meeting of the Society unless previously removed by a resolution of a majority of the members present at any meeting called for that purpose. At every annual meeting of the Society the Committee treasurer secretary and auditors shall be appointed for the ensuing year or in default thereof those last appointed shall be considered as again appointed. In case any member of the Committee treasurer secretary or auditor shall die resign or be removed prior to such annual meeting the Committee shall appoint a person to fill the vacancy.

16. The treasurer and secretary shall be trustees of the Society and shall place all moneys of the Society in the —— Bank Ltd. —— in their joint names or in some other Bank selected by the Committee.

17. The Committee shall meet once at least in every month on such day and hour as they appoint or as the chairman appointed by them shall fix. Any three of the Committee duly assembled at any such meeting shall form a quorum and shall have full power to superintend and conduct the business of the Society according to the rules provided for the government thereof and shall in all things act for and in the name of the Society; and all acts and orders under the powers delegated to them shall have the like force and effect as the acts and orders of the Society in general meeting. Every question at such meeting shall be decided by a majority of votes and if the votes are equal the chairman shall have a second or casting vote. Any two of the Committee may call a special meeting thereof by giving seven clear days' notice in writing to the secretary but at such special meeting no other business than that specified in the notice shall be taken into consideration. The Committee shall convene all the meetings of the Society on such requisitions as are herein mentioned.

18. The Treasurer shall:—

(a) In the month of December in every year and also when required by a meeting of the Society or by the Committee upon demand made or notice in writing given to him or left at his last or usual place of residence render a just and true account of all moneys received and paid by him on account of the Society;

(b) on the like demand or notice pay over all moneys and deliver all property for the time being in his hands or custody to such persons as a meeting of the Society or the Committee appoint;

(c) be responsible for such sums of money as may from time to time be paid into his hands by the secretary or by any person on account of the Society;

(d) balance his cash account monthly and supply the secretary with a duplicate thereof;

(e) if required attend every meeting of the Society.

19. The Secretary shall:—

(a) Attend every meeting of the Society and of its Committee;

(b) record correctly the names of every member of the Committee present at every meeting thereof and make minutes of the proceedings of the Society and of its Committee which he shall transcribe into a book to be authenticated by the signature of the chairman as the proceedings of the meeting;

(c) receive proposals for admission and demands for allowances of every description granted by the rules;

(d) keep the accounts documents and papers of the Society in such manner and for such purposes as the Committee may appoint.

20. The Committee shall:—

(a) Cause the accounts of the Society to be regularly entered in proper books;

(b) once at least in every year submit the accounts together with a general statement of the same and all necessary vouchers up to the —— day of —— then last for audit to two or more persons appointed as auditors by the members at the last preceding annual meeting of the Society; and

(c) lay before every annual meeting of the Society a balance sheet and an account of the receipts and payments funds and effects of the Society together with a statement of the affairs of the Society since the last annual meeting and of their then condition.

Such auditors shall have access to all the books and accounts of the Society and shall examine every balance sheet and annual account of the Society and shall verify the same with the accounts and vouchers relating thereto and shall either sign the same as found by them to be correct duly vouched and in accordance with law or shall specially report to the meeting of the Society before which the same is laid in what respects they find it incorrect unvouched or not in accordance with law.

21. The books of account and vouchers of the Society shall be open to the inspection of any member at all reasonable hours at the office of the Society or at any place where the same are kept and it shall be the duty of the secretary to produce them.

22. The Society may at any time be dissolved by resolution of a meeting of the Society and the assets disposed of in accordance with the terms thereof.

Form 8.

Assent in Favour of a Person who is Absolutely Entitled to Freeholds and Leaseholds, together with an Assignment of the Benefit of all Covenants and Agreements in respect of the Properties, an Indemnity being given to the Personal Representative (*a*).

Party.

KNOW ALL MEN BY THIS ASSENT which is made the —— day of —— 19— that A of *etc.* (hereinafter called "the Representative") hereby declares as follows:—

(*a*) Stamp 10s., as this assent is to be executed under seal. Notice of the assent should be endorsed on the probate or letters of administration in accordance with the provisions of the Administration of Estates Act, 1925, s. 36 (5). In addition to vesting the land in the beneficiary entitled thereto, this assent also contains an assignment of the benefit of the right to enforce covenants and agreements vested in the deceased. There are a number of covenants for the benefit of land or its owner which do not run with the land and some of which cannot be subsequently assigned should the ownership of the land and of the covenant become separated. The

Definitions.

1. In this Assent the following expressions shall have the following meanings that is to say:—

"The Deceased" shall mean B of *etc.* who died on the —— day of —— 19— and Probate of whose Will dated the —— day of —— [and —— Codicil[s]] thereto was [letters of administration to whose estate were] granted to the Representative out of the —— Probate Registry on the —— day of —— 19—

"The Owner" shall mean C of *etc.*

No previous assent.

2. The Representative as personal representative of the Deceased has not given or made assent or conveyance in respect of a legal estate in or affecting the properties specified or referred to in the First and Second Schedules hereto or in any part of such property.

Assent.

3. The Representative as personal representative of the Deceased hereby assents to the vesting in the Owner of ALL the properties specified or referred to in the First and Second Schedules hereto TO HOLD unto the Owner as to the freehold portions thereof in fee simple and as to each leasehold portion thereof for all the residue now unexpired of the term of years for which the same is held and as to all such properties for his own absolute use and benefit.

Assignment of covenants.

4. The Representative as personal representative of the Deceased hereby assents to the vesting in the Owner and hereby assigns (*b*) to the owner the benefit of and the right to enforce

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most obvious example of such a covenant is a restrictive covenant taken for the benefit of particular land but not annexed to it. Once the covenantee has parted with the whole of the land he cannot afterwards effectually assign the benefit of the covenant: *Re Union of London and Smiths Bank's Conveyance*, [1933] Ch. 611. Also all the covenants in a lease do not run with the leasehold interest or with the reversion. One of the more important of such covenants which do not run is probably an option to purchase: *Woodall* v. *Clifton*, [1905] 2 Ch. 257. It has not been the practice in an assent to deal expressly with covenants affecting the land. It would seem, however, that there should be an express assignment of any such covenants which are known to exist, and, in a case such as that contemplated in this assent where a number of parcels are being dealt with together, the rights annexed to which may not be in the draftsman's mind, there should be a general assignment of the benefit of all covenants and agreements, so that the beneficiary may acquire the land with all the advantages vested in the deceased.

(*b*) An assent is the creature of statute and it is not clear that it can be employed except to transfer lands; accordingly it is advisable to assign the benefit of the covenants.

all covenants agreements and provisions (whether positive or negative) obtained by the Deceased or otherwise held or vested in the Deceased at his death and still vested in the Representative arising under conveyances leases tenancies and other transactions relating to the said properties specified or referred to in the Schedule hereto or any of them.

Indemnity.

5. The Owner (*c*) hereby covenants with the Representative that the Owner and the persons deriving title under him will at all times hereafter duly pay all rent due or to become due under the several leases referred to in the Second Schedule hereto as from the death of the Deceased and will also at all times save harmless and keep indemnified the Representative his estate and effects and the estate and effect of the Deceased from and against all proceedings costs claims and demands and expenses on account of any omission to pay the said rents or any of them or any breach of the said covenants agreements and conditions.

Acknowledgment for production.

6. The Representative hereby acknowledges the right of the Owner to production of the probate [letters of administration] so granted to the Representative as aforesaid (the possession whereof is retained by the Representative) and to delivery of copies thereof.

As witness *etc.*

The First Schedule.

[*To contain a description of the freehold properties.*]

The Second Schedule.

[*To contain a description of the leasehold properties and of the leases under which they are held.*]

(*c*) It has not been the general practice in the past to insert in assents dealing with leaseholds any covenant of indemnity, as it was thought that the personal representative would ordinarily be sufficiently protected by s. 26 of the Trustee Act, 1925, and would after assent not remain liable on the covenants in the lease: see Key and Elphinstone's Precedents in Conveyancing, 14th ed., vol. 1, p. 248, note (*e*). *Re Owers, Public Trustee* v. *Death*, [1941] Ch. 389, shows that this view was wrong and ordinarily a personal representative will be personally liable by reason of privity of estate as he will have had to enter into possession. In these circumstances it seems that a personal representative should always require a covenant of indemnity when making an assent in respect of leaseholds.

Form 9.

Assignment under the Judgments Act, 1864, of Leaseholds extended under a Writ of Elegit (*a*).

Based on a draft settled by A. H. Withers, of Lincoln's Inn.

Parties. THIS ASSIGNMENT is made the —— day of —— BETWEEN A. Ltd. of *etc.* whose registered office is at —— (hereinafter called "the Vendors") of the first part B of *etc.* (*b*) (hereinafter called "the Debtor") of the second part and C of *etc.* (hereinafter called "the Purchaser") of the other part

Recitals: Lease; WHEREAS by an Indenture (hereinafter called "the Lease") dated the —— day of —— and made between —— of the one part and —— (hereinafter called "the Lessee") of the other part ALL THAT [*here insert short description of leasehold premises*] subject to the reservations or exceptions therein and with the appurtenances were demised to the lessee for the term of —— years from the —— day of —— subject to the payment of the yearly rent of £—— thereby reserved and to the covenants on the part of the lessee therein contained

Assignment to debtor; AND WHEREAS by virtue of divers mesne assurances acts in the law and events and ultimately by a conveyance dated the —— day of —— and made between —— of the one part and the Debtor of the other part the premises comprised in the lease became absolutely vested in the Debtor for all the residue then unexpired of the said term of —— years granted by the lease subject to the rent reserved by and to the covenants and conditions contained in the lease

Judgment; AND WHEREAS (*c*) by a judgment of the King's Bench Division of the High Court of Justice (—— District Registry) made in an action there depending wherein the Vendors were plaintiffs and the Debtor was defendant and bearing date the —— day of —— the Vendors recovered

(*a*) Stamp *ad valorem*. Every person to whom any sum of money or any costs shall be payable under a judgment or order is, as soon as the money or costs are payable, entitled to sue out one or more writ or writs of elegit to enforce payment: R. S. C., Order 42, r. 17. Only legal estates in land can be taken on a writ of elegit. The process of execution on a writ of elegit is shortly as follows: The writ having been issued, it is placed in the hands of the sheriff of the county where the lands are situated. The sheriff holds an inquisition to determine what lands the debtor owns. This having been ascertained, he makes a return to the writ specifying the lands and stating that he has delivered them to the creditor. This gives to the creditor a right of entry. If he is not permitted to enter in fact, he must bring an action for possession. He is entitled at any time after the land has been actually delivered in execution and the writ or other process of execution has been duly registered to obtain from the Court of Chancery an order for the sale of the debtor's interest in such land: Judgments Act, 1864, s. 4; *Re Chance*, [1936] Ch. 266. Before such application can be made, the writ must be registered in the register of writs and orders at the Land Registry in accordance with the requirements of the Law of Property Act, 1925, s. 195 (3) (i). An execution creditor in possession under a writ of elegit is probably in the position of a mortgagee and could also obtain an order for sale under the Law of Property Act, 1925, ss. 91, 205 (1) (xvi).

(*b*) The easiest course is for the debtor to join in the conveyance. If he refuses, a vesting order is required under the Trustee Act, 1925, ss. 44, 47, or an order appointing a person to convey must be obtained under the Trustee Act, 1925, s. 50.

(*c*) The various steps which have to be taken in order to validate an order for sale of the debtor's lands should be recited.

against the Debtor the sum of £A together with interest thereon as therein mentioned and together with certain costs as in the said judgment mentioned (which costs were allowed at the sum of £B)

Issue of writ of elegit;

AND WHEREAS on the —— day of —— the Vendors caused a writ of elegit to be sued out of the said division of the High Court of Justice directed to the Sheriff of the County of —— commanding him that without delay he should cause to be delivered to the Vendors by a reasonable price and extent (inter alia) all such lands tenements and hereditaments in his bailiwick as the Debtor was or were seised or possessed of or on the —— day of —— or at any time afterwards TO HOLD the said lands tenements and hereditaments respectively according to the nature and tenure thereof to them and their assigns until the said two sums of £A and £B together with interest after the rate of £4 per cent. per annum on the said sums from the —— day of —— [*date of judgment*] should have been levied

Inquisition;

AND WHEREAS the said writ of elegit was duly delivered to the said Sheriff of the County of —— and by virtue thereof the said Sheriff duly caused an inquisition to be held at the —— in the said County on the —— day of —— before the said Sheriff when a jury of the said County (being duly sworn and charged to inquire of the several matters in the said writ mentioned) found on the —— day of —— that the Debtor was on the —— day of —— [*date of judgment*] and on the —— day of —— [*date of inquisition*] possessed in desmesne of all the lands demised by the lease (except and reserved as in the lease stated) for the residue of the term granted by the lease at the yearly rent of £—— and subject to the lessee's covenants and the conditions in the lease contained and which said premises were of the clear yearly value in all issues beyond reprizes of £——

Delivery of possession;

AND WHEREAS (*d*) on the —— day of [*date of inquisition*] the said Sheriff delivered to the Vendors possession of the premises demised by the lease TO HOLD to them and their assigns according to the nature and tenure thereof until the moneys in the said writ mentioned with interest as therein mentioned should have been levied

Return to the writ;

AND WHEREAS on the —— day of —— [*day after the date of inquisition*] the said Sheriff made a return to the said writ and the said writ and the return have been duly filed as a record in the King's Bench Division of the High Court of Justice

Writ registered;

AND WHEREAS (*e*) the said writ of elegit was on the —— day of —— duly registered in the Land Charges Department of the office of Land Registry

Order for sale;

AND WHEREAS by an order (hereinafter called the order for sale) of the Chancery Division of the High Court of Justice made by Mr. Justice —— on the —— day of —— in a matter the short title whereof is *re* —— and *re* Judgments Act 1864 —— (which matter is hereinafter referred to as the said action) It was ordered that the following inquiries be made that is to say 1. An inquiry what was due to the Vendors under and by

(*d*) This gives a legal term to the creditor: *Johns* v. *Pink*, [1900] 1 Ch. 296.

(*e*) It is essential that the writ be registered: see Law of Property Act, 1925, s. 195 (3) (i); *Re Chance*, [1936] Ch. 266.

virtue of the said judgment 2. An inquiry what lands and properties had been extended under and by virtue of the said writ of elegit and charged by registration of the said writ on the —— day of —— and 3. An inquiry whether there were any and (if any) what liens charges or incumbrances upon the said lands or upon any and what parts thereof and what were their priorities and what was due on account thereof respectively and it was ordered that it be referred to the Taxing Master to tax the costs of the Vendors of the application on which such order was made and that the Vendors should be at liberty to add the amount of such costs when taxed to what should be certified to be due under inquiry 1 and that upon the Debtor paying to the Vendors the total amount of the said debts and costs within one month after the date of the Master's certificate of the result of the said inquiry at such time and place as should be thereby appointed the Vendors should cause satisfaction to be entered on the said judgment and that in default of the Debtor paying to the Vendors the total amount of the said debt and costs within one month after the date of the Master's said certificate at such time and place as should be thereby appointed the lands and property which should be certified to have been extended under the said writ of elegit and charged by the registration thereof be sold with the approbation of the Judge free from the incumbrances (if any) of such of the incumbrancers as should consent to the said sale and subject to the incumbrances of such of the incumbrancers as should not consent to the sale and that the money to arise by such sale should be lodged in Court to the credit of in the matter of —— and in the matter of the Judgments Act, 1864 —— subject to further order

Master's certificate;

AND WHEREAS by a certificate made in the said action on the —— day of —— and filed on the same day Master —— certified that there were due to the Vendors under and by virtue of the said judgment certain sums in such certificate mentioned and that the lands and properties which had been extended under and by virtue of the said writ of elegit consisted of the premises demised by the lease for the residue of the term granted by the lease and that there were no liens charges or incumbrances upon the said lands or any part thereof other than the said writ of elegit

Debt unpaid;

AND WHEREAS the Debtor did not pay to the Vendors any part of the debt and costs within one month after the date of the Master's said certificate

Agreement for sale;

AND WHEREAS (*f*) by an agreement (hereinafter called the agreement for sale) dated the —— day of —— and made between the Vendors and the Purchaser the Vendors agreed with the Purchaser (subject to the approval of His Majesty's High Court of Justice) for the sale to the Purchaser at the price of £—— of the premises demised by the lease for all the residue then unexpired of the term thereby granted subject to the rent reserved by and to the covenants on the part of the lessee and conditions contained in the lease

(*f*) The agreement for sale is brought on to the title.

Direction to carry agreement into effect;

AND WHEREAS by an order of the Chancery Division of the High Court of Justice made by Mr. Justice —— on the —— day of —— in the said action the said agreement for sale was directed to be carried into effect

Payment of purchase money into Court.

AND WHEREAS the deposit of £—— paid by the Purchaser under the agreement for sale has been paid into Court to the credit specified in the order for sale and the further sum of £—— (balance of the said purchase money) has also been paid into Court to the same credit

NOW THIS ASSIGNMENT WITNESSETH and it is hereby agreed and declared as follows :—

Acknowledgment of purchase moneys.

1. THIS assignment is executed in pursuance of the agreement for sale and the orders hereinbefore mentioned and in consideration of the sum of £—— paid by the Purchaser and so paid into Court as aforesaid the payment whereof the Vendors and the Debtor hereby acknowledge.

Assignment to Purchaser.

2. THE Vendors under the powers in this behalf conferred on them by the orders hereinbefore mentioned and the statutes in that behalf hereby assign and the Debtor hereby assigns and confirms unto the Purchaser All and Singular the hereditaments and premises demised by the lease (which premises are now known as ——) TO HOLD the same UNTO the Purchaser for all the residue now unexpired of the term granted by the lease subject henceforth to the payment of the rent reserved by and to the performance and observance of the covenants on the part of the lessee contained in the lease.

Covenant for title.

3. THE (*g*) same covenant shall be deemed to be implied by these presents on the part of the Vendors as if they had assured and been expressed to assure the premises hereby assured as Trustees.

Covenant of indemnity.

4. THE Purchaser hereby covenants with the Debtor that he the Purchaser will henceforth during the continuance of the said term pay the rent reserved by and perform and observe the covenants on the part of the lessee and conditions contained in the lease and will at all times keep the Debtor his executors and administrators effectually indemnified against all actions proceedings costs damages expenses claims and demands whatsoever by reason or on account of the non-payment of the said rent or any part thereof or the breach non-performance or non-observance of the said covenants and conditions or any of them.

5. [*Certificate under section 73 of the Finance* (1909–10) *Act* 1910 *where purchase money does not exceed* £500.]

IN WITNESS, *etc.*

(*g*) In view of the decision in *Fay* v. *Miller, Wilkins & Co.*, [1941] Ch. 360, it is not safe to make the vendors convey as trustees as they are not trustees : see the article on Implied Covenants for Title, *ante*, p. 3.

Form 10.

Power of Attorney to Recover a Value Payment under the War Damage Act, 1941 (*a*).

By this Power of Attorney I, A of *etc.* hereby appoint B of *etc.* my Attorney in my name and on my behalf to do or execute all or any of the acts and things hereinafter mentioned that is to say :—

Power to receive valu payment.

1. To receive from the War Damage Commission (hereinafter called "the Commission") the value payment or value payments to be made by the Commission in respect of the whole or any part of the land and premises known as —— situate at —— which said premises sustained war damage on or about the —— day of —— and all interest due or to become due in respect thereof and to give effectual receipts releases and discharges for the same.

(*a*) Stamp 10s. A power of attorney may be used to collect a value payment, it seems, in three different sets of circumstances. There is first the ordinary case where the owner of the value payment cannot personally transact the business connected with the recovering the payment. There is secondly the case contemplated by Form 13 (4) (Vol. 6, p. 360) where the owner of land which has suffered war damage, sells the land, the parties expecting that a payment of cost of works will be made, but the purchaser requires some security to be given to meet the difficulties which would arise should the War Damage Commission, in the exercise of any of their powers, make, contrary to such expectations, a value payment. By clause 2 of Form 13 (4) the vendor, *inter alia*, covenanted that he would at the request and cost of the purchaser appoint the purchaser to be his attorney to collect the value payment. This power of attorney can be used to give effect to the covenant in Form 13 (4) should the Commission in the event decide to make a value payment. Form 13 (4), however, will in future be generally not required as the War Damage (Amendment) Act, 1942, Sched. I, para. 8, would in such circumstances give the value payment to the purchaser without the necessity for any power of attorney. Where the Commission have, in their preliminary classification, placed the property in Class B as a partial loss case in accordance with the procedure indicated in their Practice Notes (first series), para. 61, a payment of cost of works can be safely assumed for the purpose of bringing para. 8 of the First Schedule to the amending Act into operation. This form of conveyance may, however, still be useful either when the Commission have not yet classified the property, or have classified it as Class C, undetermined, and the purchaser is not prepared to rely on para. 8 of the First Schedule to the amending Act to carry the value payment automatically to him.

There is thirdly the case where the owner of land which will attract a value payment seeks to sell it together with the benefit of such payment. As a general rule the Commission will not approve the assignment of a value payment, with the result that the assignment of the payment is under s. 9 (7) of the principal Act of no effect. The object of this provision is to prevent claimants assigning their claims as collateral security for current loans and to prevent speculation in damaged properties. It has been suggested that these provisions can be circumvented by the vendor giving to the purchaser of damaged land a power of attorney. As such power would be given for valuable consideration it could under s. 126 of the Law of Property Act, 1925, be made irrevocable in favour of the purchaser. This course is not prohibited by s. 9 (7) but it plainly infringes its spirit and, if frequently resorted to, would probably be nullified by a future Act. It cannot be recommended. When the scheme was originally suggested, it was intended to provide for the case of hardship which undoubtedly would have arisen where there was a sale of land which would normally attract a value payment and in the public interest the Commission made a value payment. That this was an exceptional and hard case was recognised by para. 8 of the First Schedule to the amending Act, which has provided for it. In the ordinary case, it is doubtful whether the machinery of a power of attorney will give a purchaser of a value payment security for its payment to himself. It would seem to do so to-day, but the probabilities are that future retrospective legislation will defeat the effective operation of such a power of attorney.

To employ agents.

2. From time to time to appoint and employ any architect surveyor or other person as he the said B may think proper to assist him in estimating and establishing my claim to the value payment or any part thereof and to appoint and remove at pleasure any substitute or substitutes as his attorney or agent under him in respect of all or any of the matters aforesaid upon such terms as he shall think fit.

To settle accounts.

3. To commence prosecute enforce defend answer or oppose all actions and other legal proceedings and demands touching any of the matters aforesaid and if thought fit to refer to arbitration and to compound and accept payment in lieu of or in satisfaction for the whole of or any part of the said value payment and to settle and adjust all accounts and questions depending between myself and the Commission in respect of the said value payment.

Ratification clause.

4. And I hereby for myself my executors and administrators ratify and confirm and agree to ratify and confirm whatever my said attorney or any substitute or substitutes acting under him shall do or purport to do by virtue of this deed.

Power to be irrevocable.

5. And (*b*) I hereby declare that this power of attorney shall be irrevocable for —— calendar months from the date hereof

[*or* I hereby declare (*c*) that this power is given for valuable consideration and is irrevocable.]

In Witness *etc.*

(*b*) See the Law of Property Act, 1925, s. 127. The power must not be made irrevocable for more than twelve months.

(*c*) Where the power is given as part of the bargain on the sale of the war damaged premises, this clause may be inserted and the power made irrevocable: see the Law of Property Act, 1925, s. 126; see also note (*a*).

Form 11.

Agreement conferring a right of pre-emption or "first refusal" in respect of freehold property. Short form (*a*) (*b*).

AN AGREEMENT made *etc.* BETWEEN A B of *etc.* (hereinafter called "the Vendor") of the one part and C D of *etc.* (hereinafter called "the Purchaser") of the other part

WHEREAS:

(A) The Vendor is seised of the lands and property described in the schedule hereto (hereinafter called "the scheduled property") for a legal estate in fee simple in possession [subject *etc.* but otherwise] free from incumbrances

(B) The Purchaser has requested the Vendor to grant to him such a right of pre-emption in respect of the scheduled property as is hereinafter mentioned which the Vendor has agreed to do upon the terms hereinafter appearing and upon payment by the Purchaser to the Vendor of the sum of £——

NOW IT IS HEREBY AGREED AND DECLARED as follows:—

1. This agreement is made in consideration of the sum of £—— on or before the execution hereof paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges).

2. If and so often as the Vendor shall before the expiration of a period of [ ] from and after the date hereof be desirous of selling the scheduled property or any part or parts thereof the Vendor shall before selling the same give to the Purchaser notice in writing of his the Vendor's said desire and shall in such notice specify the lands to which it extends And if the Purchaser shall be desirous of treating for the purchase of such lands or any of them he the Purchaser shall within [14] days after the receipt by him of such notice inform the Vendor in writing of his the Purchaser's said desire and by such writing specify the lands for the purchase whereof he desires to treat.

3. The Vendor shall thereupon inform the Purchaser in writing of the price at which he the Vendor is prepared to sell the said lands (if any) for the purchase whereof the Purchaser has so signified his desire to treat And if the Purchaser desires to purchase such lands at such price as aforesaid he the Purchaser shall within [14] days after being so informed in writing of such price give notice in writing to the Vendor

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(*a*) Stamp: 6d., or if under seal, 10s. The purchaser should register under Land Charges Act, 1925, s. 10, a Land Charge Class C (iv) ("estate contract") in respect of the agreement.

(*b*) An option to purchase land unlimited in point of time is void for remoteness. The agreement should therefore be limited so as to be bound to take effect, if at all, within the period limited by the rule against perpetuities. For the effect of the words "first refusal", see *Ryan* v. *Thomas*, 55 S. J. 364; *Manchester Ship Canal Co.* v. *Manchester Racecourse Co.*, [1900] 2 Ch. 852; [1901] 2 Ch. 37; and articles by Mr. F. E. Farrer in XVII *The Conveyancer* (old series), at p. 153.

of his the Purchaser's said desire and a contract shall thereby be concluded between the Vendor and the Purchaser for the sale and purchase at such price of such lands for a legal estate in fee simple in possession subject [to *etc.* and] to the subsisting leases and tenancies (if any) but otherwise free from incumbrances.

[4. The Purchaser having investigated the Vendor's title to the scheduled property shall accept [(without investigating or raising in relation thereto any objections or requisitions)] the title of the Vendor down to the date hereof to sell and convey the lands comprised in any such contract as aforesaid and every such contract shall in all other respects be subject to the common-form general conditions of sale known as the [ ] Conditions of Sale so far as applicable to a sale by private treaty.]

[5.] If the Purchaser shall not within any period hereby limited in that behalf (as to which time shall be of the essence of the contract) give any such notice as aforesaid whereby to signify his desire to treat or to conclude such a contract as aforesaid or shall within any such period signify in writing to the Vendor unconditionally his intention not to purchase such lands then and in such case it shall be lawful for the Vendor to sell such lands to any other person or persons but so that any sale thereof made or contracted to be made before the expiration of the said period of [ ] shall not be at a price less than that at which the Vendor shall have expressed his willingness to sell the same to the Purchaser in manner aforesaid.

[6. PROVIDED that the foregoing provisions shall not apply in relation to any part of the scheduled property possession of which shall at any time be or have been taken on behalf of His Majesty under emergency powers as defined by the Compensation (Defence) Act 1939.]

AS WITNESS *etc.*

SCHEDULE.

Description of property to which the above-written agreement relates.

Form 12.

Will—Estate Given to Person Reported Missing in Present War—Trusts and Provisions to Secure that such Person shall receive Estate if subsequently Found to be Alive—Alternative Trusts and Provisions if such Person be found to be Dead or is Presumed Dead (*a*).

Drafted by Mr. A. L. Burford, Solicitor.

I —— of —— [wife of —— a —— in His Majesty's ——] hereby revoke all wills and testamentary dispositions heretofore made by me and declare this to be my last will

1. I APPOINT my [said husband ——] [my son ——] [my daughter ——] and —— of —— and —— of —— to be executors and trustees of this my will AND I DECLARE that the expression "my Trustees" shall include the trustee or trustees for the time being of this my will whether original or substituted. Appointment of executors (*b*).

(*a*) This form deals with a case where the person intended to be the sole or principal beneficiary has been listed as "missing" while on war service, and no information is available, or can be obtained from the authorities, indicating whether or not such beneficiary is dead or has been taken prisoner or has been interned. The missing beneficiary is usually the husband, son, or near relative of the testator or testatrix (as the case may be), but it is possible, now that women participate in war operations, that the missing beneficiary may be a daughter of the testator or testatrix. In a case of this nature the testator is generally anxious to provide that the missing beneficiary shall receive the benefits intended for him or her if, when more information is available, it is found that he or she is alive. This desire is met in this form, by postponing the distribution of the estate (except possibly for immediate legacies) until the requisite information is obtained; in exceptional cases this information may only be obtained following the completion of the general repatriation of prisoners of war or interned persons, and these remote cases are covered by the form. In order, however, to comply with the perpetuity rule, a maximum period of postponement (less than twenty-one years from the death of the testator) should be fixed. (See clause 3 (b).)

(*b*) If it is desired to appoint the missing beneficiary as an executor, it is important that another person, or persons, should be appointed jointly with him or her to enable the will to be proved and the estate collected and protected; if the missing beneficiary were appointed sole executor a difficult situation would result if such beneficiary were still missing at the testator's death.

Immediate legacies, etc. (*c*).

2. I GIVE the following legacies [free of all duties] namely:—

Provisions protecting missing beneficiary.

3. WHEREAS my [said husband] [son] [daughter] has been posted as missing while on active service in [——] in the present war and at the date hereof I have no official information whether he/she is dead or alive Now if my said [husband] [son] [daughter] shall survive me and be still living when the fact of such survival is learnt by my Trustees [(other than my said [husband] [son] [daughter])] (*d*) then [(subject nevertheless to the legacies hereinbefore given) (*c*)] I give to my said [husband] [son] [daughter] absolutely all my estate of whatsoever nature and wheresoever situate PROVIDED that if at my death there shall be no sufficient evidence that my said [husband] [son] [daughter] is either alive or dead then the following provisions shall apply:—

(a) My Trustees shall as soon as practicable after my death inquire of the [War Office] [Admiralty] [Air Ministry] and of any other Department or office to whom they may be referred by the [War Office] [Admiralty] [Air Ministry] for information as to my said [husband] [son] [daughter] and if he/she shall have been officially posted as killed or dead then he/she shall be presumed to be dead but if he/she shall still remain posted as missing then no such presumption of death shall be made.

(b) If no presumption of death can be made pursuant to the last sub-clause hereof then if I die before the expiry of a period of [——] calendar months from and after the completion of the general repatriation to this

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(*c*) Any legacies or devises intended to be given whether or not the missing beneficiary is found to be dead or alive should be set out in clause 2. The words in brackets in clause 3 are unnecessary if no immediate legacies or devises are given.

(*d*) The point of the words "and be still living when the fact of such survival is learnt by my trustees" is that the missing beneficiary may survive the testator but may nevertheless die before the fact that he or she was alive becomes known; in such a case the probability is that the testator would not wish the estate to vest in the missing beneficiary who may have died in captivity. The relevant words in brackets are only required if the missing beneficiary is appointed an executor.

country of British prisoners of war or internees taken or interned in the present war my Trustees shall hold my estate until the expiry of such period as aforesaid or until the expiry of a period of [——] years from my death (whichever shall be the shorter) (*e*) and thereupon unless the [War Office] [Admiralty] [Air Ministry] or any such other Government Office or Department shall have stated meanwhile that my said [husband] [son] [daughter] is alive my said [husband] [son] [daughter] shall be presumed to be dead AND I DECLARE that the date given to my Trustees in an official statement made by or on behalf of a Government Department as being either the precise or the approximate date of the completion of such repatriation as aforesaid shall for the purpose of this provision be conclusively taken to be the date of the completion of such repatriation.

(c) Nothing in the last sub-clause hereof shall prevent my Trustees from making inquiries at or requesting information from the [War Office] [Admiralty] [Air Ministry] and/or any other Government Office or Department as aforesaid during the currency of the period to which the last sub-clause shall apply and if whether as a result of such inquiries or request or otherwise my Trustees shall be satisfied that my said [husband] [son] [daughter] has been officially posted as killed or dead he/she shall be presumed to be dead and the last sub-clause shall cease to apply.

(d) Until such time as my said [husband] [son] [daughter] shall be presumed to be dead or shall be found to be

(*e*) The duration of the periods to be inserted in clause 3 (b) would have to be considered with the testator. A period of twelve calendar months after the general repatriation of prisoners and internees would seem to be sufficient, but the period of years to be inserted will be gauged by the testator's opinion as to the probable length of the war. In this connection it has to be borne in mind, (i) that the testator may die shortly after making the will (*e.g.*, as a result of bombing), or (ii) that he may survive the end of the war by a long period. If the latter prevailed there would, no doubt, be sufficient evidence that the missing beneficiary was either alive or dead at the testator's death, and the provisions as to postponement of the distribution would not then apply. The former possibility is therefore the more important, and perhaps it may be thought that a period of two or three years is not too optimistic.

alive (as the case may be) my Trustees shall have power (in addition to and not in limitation of or substitution for any statutory or other powers) to sell call in and convert any part or parts of my estate at such time or times and in such manner as my Trustees shall in their absolute and unfettered discretion think fit and the net proceeds of sale and my ready money may be invested by my Trustees in or upon any stocks funds or securities for the time being authorised by law for the investment of trust moneys and until such time as aforesaid my Trustees shall accumulate the income of my estate by investing the same and the resulting income therefrom in or upon such stocks funds or securities as aforesaid AND I DECLARE that the exercise by my Trustees of the powers hereinbefore mentioned shall be valid and binding upon the person or persons who shall become entitled to my estate (including my said [husband] [son] [daughter]) notwithstanding that it may be found that at the date of the exercise of such powers such person or persons had become entitled to my estate.

Provision fixing termination of trusts in favour of missing beneficiary.

4. THE trusts in favour of my said [husband] [son] [daughter] shall be deemed to have failed at the earliest of the following dates namely:—

(1) the date of my death if there is at that date sufficient evidence that my said [husband] [son] [daughter] did not survive me or

(2) the date when presumption is to be made (in accordance with the foregoing provisions) that my said [husband] [son] [daughter] is dead (disregarding the actual date of death).

Alternative trusts if missing beneficiary found to be dead or presumed to be dead.

5. IF my said [husband] [son] [daughter] shall not become entitled to my estate under the foregoing trusts and provisions then upon failure of such trusts (hereinafter called "the distribution date") the following sub-clauses shall take effect namely:—

A.—I GIVE the following pecuniary legacies (free of all duties) to the legatees hereinafter named but in each

case only if the legatee or legatees (as the case may be) shall be living at the distribution date (*f*) namely:—

B.—SUBJECT to the foregoing legacies (and the duties thereon) and after payment of my debts funeral and testamentary expenses and any other duties payable out of my estate I GIVE the residue of my estate whatsoever and wheresoever situate (including any accumulations that may have been made thereto under the provisions hereinbefore contained) to —— (*f*).

6. [*Charging clause—if necessary.*]

IN WITNESS *etc.* SIGNED *etc.*

Form 13.

Settlement of Investments by the Executor of a Deceased Employer under the Power to Compromise Conferred by section 15 of the Trustee Act, 1925, to Provide a Pension for an Employee and his Wife Pursuant to an Undertaking by the Employer to Make Further Provision for the Employee (*a*).

THIS SETTLEMENT made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "A") of the first part B of *etc.* Parties.

(*f*) The point of making these legacies conditional upon the legatees being alive on the distribution date is that a legatee may survive the testator but die before the distribution date which may arrive some considerable period after the testator's death. In that event the testator would probably not wish the legacy to go to the legatee's estate as the intention would no doubt be to benefit the legatee personally. The same point applies to gifts of residue, and they should accordingly be made conditional upon the residuary legatee surviving the distribution date unless the testator or testatrix otherwise requires or the gift is to a corporation or charity.

(*a*) Stamp *ad valorem.* This deed is intended to meet the case where an employer has agreed with his employee to make some provision by way of pension for him and his wife. In such a case, if the amount of the pension has never been agreed during the employer's life, in most cases the employee would have a good claim against the employer's estate for some provision. The employer's personal representatives have power to compromise such a claim under s. 15 (f) of the Trustee Act, 1925. In some cases it may be convenient to make provision for the pension by vesting in trustees investments, the income of which can be applied in paying the pension, the capital falling back into the employer's estate when the employee and his wife are dead.

company director (hereinafter called "B") of the second part C the wife of B (hereinafter called "C") of the third part and the Public Trustee of the fourth part

Recitals:

WHEREAS:

Employment and agreement to increase remuneration;

(1) B acted for many years past as confidential secretary and manager to the late X (hereinafter called "X") and was remunerated by X by the payment of an annual salary and it was a term of B's employment by X that X should make reasonable provision for B on his retirement but the nature and amount of such further provision was never agreed by X and B

Will of employer;

(2) By his Will dated —— and proved —— X appointed A sole executrix and residuary legatee

Payment of debts.

(3) The funeral and testamentary expenses debts and death duties arising on the death of X have been duly paid and satisfied with the exception of the claim of B to have further provision made for him

Estate of testator.

(4) The residuary estate of the Testator now consists of the investments specified in the Schedule hereto and of diverse other investments

Agreement to make further provision for employee.

(5) To avoid all questions and matters of doubt which might hereafter arise with reference to the further provision for B it has been agreed between A and B that A as personal representative of X and as beneficial owner so far as her interest in the said residuary estate is concerned should forthwith transfer to the Public Trustee the securities specified in the Schedule hereto to be held upon the trusts and subject to the powers hereinafter declared and contained concerning the same

Witnesseth.

NOW THIS DEED made in pursuance of the said agreements WITNESSETH as follows:—

Transfer of investments.

1. A AS PERSONAL representative of X and in exercise of the power vested in her by section 15 of the Trustee Act 1925 and as beneficial owner doth hereby assign Unto the Public Trustee the securities specified in the Schedule hereto TO HOLD the same as and when the same shall have been transferred to him upon the trusts and subject to the powers and provisions hereinafter declared and contained concerning the same.

Power to sell.

2. The Public Trustee shall stand possessed of the said securities so intended to be transferred to him as aforesaid upon trust that the Public Trustee may either allow the said securities or any part of them or any part or parts thereof respectively to remain as actually invested so long as the Public Trustee thinks fit or may at any time or times with the consent of B during his lifetime and after his death at the discretion of the Public Trustee sell call in or convert into money the same or any of them or any part thereof respectively and with the like consent and at the like discretion invest the moneys produced thereby and any other capital moneys which may be raised by the Public Trustee in respect of the trust premises in the name of the Public Trustee in or upon any investments hereby authorised with power with such consent or at such discretion as aforesaid to vary or transfer any investments for or into other of any nature hereby authorised.

Discretionary trusts of income for employee and his wife.

3. The Public Trustee shall hold the income of the said securities specified in the Schedule hereto and the property for the time being representing the same (hereinafter called "the trust fund") on protective trusts as defined in section 33 of the Trustee Act 1935 during the joint lives of B and C and the life of the survivor of them for the benefit of B and C and the survivor of them.

Trust of capital for employer's estate.

4. After the death of the survivor of B and C the Public Trustee shall stand possessed of the capital and future income of the trust fund in trust for A absolutely.

Provision for making up income to fixed amount (*b*).

5. It is hereby agreed and declared between the parties hereto that if at any time during the joint lives of B and C and the survivor of them the income of the trust fund shall fall below the sum of £—— per annum then and on any such occasion the Public Trustee shall by the sale or otherwise of a sufficient part of the trust fund raise such sum as is necessary to bring the income up to £—— and hold the same upon the trusts of income hereinbefore declared.

Investment clause.

6. Trust moneys may with such consent or at such discretion as aforesaid be invested in the purchase of or at

(*b*) Any capital raised and paid in this way will be treated as income and chargeable with income tax.

interest upon the security of such stocks funds shares securities or other investments of whatsoever nature and wheresoever including freehold or leasehold property and whether involving liability or not or upon such personal credit with or without security as the Public Trustee shall in his absolute discretion think fit to the intent that he shall have the same full and unrestricted powers of investing and transposing investments in all respects as if he was absolutely entitled thereto beneficially.

Power to settle all questions.

7. The Public Trustee may determine whether any money shall for the purposes of this deed be considered as capital or income and out of what part of the trust premises and whether out of income or capital any expenses outgoings or losses shall or ought to be paid And may determine as he shall consider just all questions and matters of doubt arising in the execution of the trusts hereof and every such determination whether made upon a question actually raised or implied in the acts or proceedings of the Public Trustee shall be conclusive and bind all persons interested hereunder (*c*).

In witness *etc.*

The Schedule.

[*To contain particulars of the investments to be assigned to the Public Trustee.*]

(*c*) In the event of the appointment of other trustees and not the Public Trustee the usual power for a solicitor or other professional person to charge for work done should be added.

Form 14.

Assignment Operating as a Severance of a Joint Tenancy by a Wife to Trustees of her Interest in Stocks and Shares held by Herself and her Husband and Settlement of the Severed Interest on the Wife for Life with a General Power of Appointment (*a*).

THIS SETTLEMENT is made the —— day of —— 19— BETWEEN A B of *etc.* (hereinafter called "the Settlor") of the one part and C D of *etc.* and E F of *etc.* (hereinafter called "the Trustees") of the other part

Recitals: Joint interest of settlor.

WHEREAS the Settlor is entitled jointly and beneficially with her husband G B to certain investments and securities

(*a*) Stamp *ad valorem*. Generally where a joint tenancy exists in real or personal property both joint tenants join in any settlement of the property. This form is intended to meet the case of one joint tenant, who desires to sever the joint tenancy, and settle the severed interest. The continuance of a joint tenancy depends on the maintenance of the unities of title, interest and possession and the destruction of any of these unities leads to a severance of the tenancy in equity and the creation of a tenancy in common. In *Re Williams* v. *Hensman* (1861), 1 John. & H. 546, at p. 557, Sir W. Page Wood, V.-C., summed up the power to sever as follows: "A joint tenancy may be severed in three ways: in the first place, an act of any one of the persons interested operating upon his own share may create a severance as to that share. The right of each joint tenant is a right by survivorship only in the event of no severance having taken place of the share which is claimed under the *jus accrescendi*. Each one is entitled to dispose of his own interest in such manner as to sever it from the joint fund—losing, of course, his right of survivorship. Secondly, a joint tenancy may be severed by mutual agreement. And, in the third place, there may be a severance by any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common."

The unity of title is destroyed where one joint tenant assigns or mortgages his share to a third person: *Daley* v. *Aldworth* (1863), 15 Ir. R. Ch. 69. The assignment of the wife's interest in this form therefore automatically severs the joint tenancy. As the assignment does not of itself operate to vest the investment and securities in the trustees they should give notice in writing to the husband of the assignment so that should he survive the wife he will know that he does not become the owner of the entirety. The best course is for this deed to be followed by a transfer of the shares into the joint names of the husband and the trustees.

This form can be adopted for use also where there is a joint tenancy in real estate. Under the proviso to sub-s. (2) of s. 36 of the Law of Property Act, 1925, a beneficial joint tenancy in land can be severed by a notice in writing or by the tenant doing such other things as would, in the case of personal estate, be effectual to sever the tenancy in equity.

and assets standing in the joint names or in the joint possession or control of herself and her said husband including the investments and securities particulars of which are contained in the Schedule hereto AND WHEREAS the Settlor is desirous of making such settlement as hereinafter appears of her beneficial interest in the said investments securities and assets. NOW THIS DEED WITNESSETH as follows:—

Assignment of joint interest.

1. THE Settlor as Settlor hereby assigns to the Trustees ALL that the one half share or other the interest to which she is entitled of and in ALL AND SINGULAR any stocks shares bonds or other investments securities or assets whatsoever standing in the joint names or in the joint and beneficial possession or under the joint control and beneficial ownership of herself and the said G B including in particular (but without limitation upon the generality of the foregoing description) the investments particulars of which are contained in the Schedule hereto TO HOLD the same unto the Trustees absolutely but nevertheless upon and subject to the trusts hereinafter declared and to the intent that the joint ownership of the Settlor and the said G B in the said stocks shares bonds investments securities or assets may be forthwith and are hereby severed.

Trust to invest.

2. THE Trustees shall receive and hold any capital sums or moneys to arise from or in respect of the said share and interest upon trust to invest the same in or upon any investments of the nature for the time being authorised in law for the investment of trust funds with power to vary or transpose investments.

Life interest to settlor.

3. THE Trustees shall pay the income to arise from the share and interest hereby assigned and the investments for the time being representing the same (all hereinafter referred to as and included in the expression "the Trust Fund") to the Settlor during her life.

Power of appointment.

4. AFTER the death of the Settlor the Trustees shall stand possessed of the Trust Fund and the future income thereof In trust for such person or persons and for such purposes as the Settlor shall by any deed or deeds revocable or irrevocable or by will or codicil appoint And in default of and subject to any such appointment for such of the Settlor's sisters namely I J the said C D and the said E F as may survive her and if

more than one in equal shares Provided nevertheless that if any of them shall die in the lifetime of the Settlor leaving a child or children living at the death of the Settlor such child or children shall take and if more than one equally between them the share in the trust fund which his her or their deceased parent would have taken if then living.

5. The statutory power of appointing new trustees of this Settlement shall be vested in the Settlor during her life. Power to appoint trustees.

In witness *etc.*

The Schedule.

[*To contain a list of the investments and securities held by the Settlor and her husband jointly.*]

Form 15.

Licence to a Tenant to use the Demised Premises as an Amusement Arcade in Breach of the Covenants in the Lease and to Erect and Maintain Advertisement Signs, the Tenant Covenanting to Reinstate the Premises at the Determination of the Lease and to obtain the consent of the Local Authorities and of the Head Lessor to such user (*a*).

Parties. THIS DEED is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Landlord") of the one part and B of *etc.* (hereinafter called "the Tenant") of the other part

Recitals: headlease; WHEREAS by a lease (hereinafter called "the lease") dated the —— day of —— 19— and made between C and D of the one part and E of the other part ALL THAT piece or parcel of land situate and having a frontage of —— or thereabouts to —— Street in the County of —— together with the hall and buildings erected thereon which said piece or parcel of land is delineated in the plan drawn thereon and coloured red and green and brown was demised unto the said E for the term of —— years and one-half of another year from the —— day of —— 19— at the yearly rent and subject to the lessee's covenants and conditions therein contained

covenants; AND WHEREAS the lease contained a covenant by the said E that he would not during the said term without the licence in writing of the said C and D first obtained erect or suffer to be erected any new buildings on the premises thereby demised or make any alteration or addition whatsoever in or to the said buildings and messuages thereby demised or any buildings which might be erected on the said premises with such licence as aforesaid either externally or internally and also would not at any time cut maim or remove the main walls or timber of the said premises unless for the purpose of repairing and making good any defect therein which should be repaired and made good accordingly and also would not carry on or permit upon

(*a*) Stamp 10s.

the premises or any part thereof any offensive noisy noisome or dangerous trade business manufacture or occupation nor use the same or allow the same to be used for any illegal or immoral purposes

sub-lease; AND WHEREAS by a lease dated the —— day of —— 19— (hereinafter called "the sub-lease") and made between the said E of the one part and the Tenant of the other part ALL THAT said piece or parcel of land together with the hall and buildings erected thereon demised by the lease was demised to the Tenant from the —— day of —— 19— for the term of —— years at the yearly rent and subject to the lessee's covenants and the conditions therein contained which included covenants (a) not to use the premises other than as a club billiards hall restaurant and concert hall and for dancing (b) not to do or permit anything in or upon the said premises or any part thereof which might be or become a nuisance annoyance or damage to the Landlord or the tenants or occupiers of other property in the neighbourhood and (c) not to affix or exhibit or permit to be affixed or exhibited to or upon any part of the exterior of the said premises or of the external walls rails or fences thereof any placards posters signboard or other advertisement without the consent in writing of the Landlord

vesting of reversion; AND WHEREAS the reversion immediately expectant on the said term of years granted by the sub-lease is now vested in the Landlord

desire of tenant to alter user. AND WHEREAS the Tenant is desirous of using or permitting to be used the hall and the rear of the ground floor of the said premises as an amusement arcade and of erecting or permitting to be erected on the exterior of the said premises two advertisement signs and the Landlord has agreed to grant a licence in that behalf as hereinafter appears

NOW THIS DEED WITNESSETH as follows:—

Licence. 1. IN consideration of the covenants by the Tenant hereinafter contained but expressly subject to the Tenant obtaining all necessary consents of the —— County Council the borough council the licensing authorities and any other public body or authority or persons whose consent may or shall be necessary

and Provided Always that in the exercise of the powers granted hereunder the Tenant shall cause no nuisance or annoyance to the superior lessors or any tenant or occupier of any part of the remainder of the premises comprised in the said lease the Lessor hereby grants unto the Tenant LICENCE AND AUTHORITY as follows:—

(a) To use the said hall comprised in the sub-lease as an amusement arcade

(b) Within a period of three months from the date hereof and under the superintendence and in all respects to the satisfaction of the Landlord's surveyors Messrs. —— to erect and maintain in the positions shown on the plan hereunto annexed the two advertisement signs in accordance with the specification furnished to the Landlord's said surveyors and signed by them for purposes of identification.

Tenant's covenants.

2. THE Tenant HEREBY COVENANTS with the Landlord as follows:—

(1) To complete the said alterations and works within the period and in the manner hereinbefore specified

(2) To do all things necessary and make all payments required for obtaining the consent of all competent authorities and the superior lessor's insurance company to the use of the said hall as an amusement arcade and to the said alterations and works before beginning the same and to pay any additional insurance premium payable by reason of the existence of the said signs or user of the said premises as an amusement arcade

(3) Within fourteen days after the determination of this licence or upon the determination howsoever determined of the said term of —— years granted by the sub-lease (whichever shall first happen) unless released from compliance with this stipulation by the Landlord at the Tenant's own cost to remove the said signs and to reinstate and make good the said premises and restore the same to the same state and condition they are now in and as if the said signs hereby authorised had not been erected

(4) To pay to the Landlord so long as this licence remains

in force the yearly sum of One pound in advance on the —— day of —— each year

(5) To manage and conduct the amusement arcade so that nothing shall be done to injure the reputation of the said premises or offend against any statute or any of the regulations or requirements of any competent authority in any way and not to do or permit to be done any act or thing which may in any way imperil any licence granted or any insurance effected in respect of the said premises or which may be or grow to be a nuisance or annoyance to the Landlord the superior lessors or the tenants or occupiers of neighbouring or adjoining premises

(6) Forthwith at his own expense to repair or make good any damage resulting from the erection or maintenance of the said signs and to indemnify and keep indemnified the Landlord from and against all actions costs claims and demands in respect of any damage done to or sustained by any person property or thing in course of such erection or the erection existence or want of repair of the said signs or of any brackets or other fittings or other means of affixing or suspending such signs.

3. It is hereby agreed and declared as follows:—

Continuance of covenants.

(a) That all the Tenant's covenants and conditions contained in the sub-lease which are now applicable to the premises comprised therein shall continue to be applicable to the same when and as altered and shall extend to all alterations which may be made thereto in the course of such alteration and that the proviso for re-entry by the Landlord contained in the sub-lease shall be exercisable in the event of the breach by the Tenant of any of the covenants on his part herein contained

Determination of licence.

(b) This licence may be determined by the Landlord by written notice sent by post to the last-known address of the Tenant on the happening of any of the following events:—

(1) Any breach or non-observance by the Tenant of any of the covenants on the part of the Tenant hereinbefore contained

(2) Any complaint objection or claims being made by the superior lessors to the user of the said hall as an amusement arcade or to the existence or maintenance of the said signs

(3) Any complaint objection or claim being made by any tenant or occupier of any of the remaining premises comprised in the sub-lease in respect of any nuisance annoyance or interference caused by or arising out of the user of the said hall as an amusement arcade or the erection existence or maintenance of the said signs

(4) In the event of the said hall ceasing to be used as an amusement arcade.

IN WITNESS *etc.*

Form 16.

Clause in a Will Giving Personal Effects to Trustees with a Request to Dispose of Them in Accordance with the Testator's Wishes. Release to the Trustees (*a*).

Drafted by A. H. Withers, of Lincoln's Inn.

I bequeath free of duties to my trustees hereinbefore named or such of them as shall survive me for their own absolute use and benefit as joint tenants all such of my personal effects hereinbefore defined as may within one year after my death be selected by them or any of them for their or his own use and disposal and I make this bequest in the fullest confidence that they will select only such articles as may be specified and mentioned in any memoranda or letters in my handwriting or signed by me expressing my wishes as to the disposition thereof and that they will dispose of the articles selected as aforesaid in accordance with my wishes as expressed in such memoranda or letters but such memoranda or letters I expressly declare shall not have any testamentary character and the above expression of my wishes as to the selection and disposal thereof shall not impose any legal or equitable obligation of any sort upon my trustees or create any trust or equity in favour of any person and I release (*b*) such of my trustees as before or after the date of this my will shall have received notice (express or implied) of my aforesaid wishes or shall have expressly or impliedly undertaken to give effect to the same from all obligations of every sort to give effect wholly or partially to my aforesaid wishes or any of them.

(*a*) This clause is so framed as to give complete discretion to the trustees and so as to impose no trust or obligation upon them.

(*b*) Persons are not infrequently somewhat chary of exercising powers such as are conferred by this clause in case it is alleged that some trust or obligation has been created by reason of the communications which the testator has made to them during his lifetime. The release, which is incorporated in this clause, should allay these doubts and difficulties.

Form 17.

Agreement and Declaration of Trust in Respect of Freehold Premises Purchased Out of Moneys Paid in Unequal Shares Where the Conveyance was Taken in the Name of One Trustee. Provisions for Management and Indemnity in Respect of a Mortgage (*a*).

THIS AGREEMENT is made the —— day of —— BETWEEN A of *etc.* (hereinafter called "the Trustee") of the first part B of *etc.* of the second part and C of *etc.* of the third part. Parties.

WHEREAS by a conveyance dated the —— day of —— 19— between E of the one part and the Trustee of the other part the property known as —— situate at —— and in the said conveyance more particularly described was conveyed to the Trustee in fee simple free from incumbrances Recitals: Conveyance

AND WHEREAS the consideration money mentioned in the said conveyance namely £X was expressed to be paid by the Trustee Consideratio for purchase

AND WHEREAS £—— part of the said consideration of £X was in fact provided by F and G out of moneys belonging to them on a joint account (the repayment thereof being secured by the mortgage hereinafter mentioned) and the balance of the said sum of £X was provided as to £—— being one equal fourth part thereof by the said B as to £—— being a further one equal fourth part thereof by the said C and as to £—— being the remaining two equal fourth parts thereof by the Trustee Payment of considera-tion;

AND WHEREAS by a mortgage made the —— day of —— between the Trustee of the one part and the said F and G of the other part the premises were charged by way of legal mortgage with repayment to the said F and G of the said sum of £—— so advanced by them as aforesaid together with interest thereon at the rate of £—— per cent. per annum Mortgage;

AND WHEREAS the parties hereto have agreed to execute these presents for the purpose of defining their respective beneficial interests in the premises and to enter into and become bound by the stipulations on their respective parts hereinafter contained Agreement.

NOW THIS DEED WITNESSETH as follows:—

1. IN consideration of the premises the Trustee hereby declares that from the date of the said conveyance he has held and now holds the premises subject nevertheless to the said mortgage and the principal moneys and interest thereby secured as to one undivided equal fourth part thereof upon trust for the said B and to another undivided equal fourth part thereof upon trust for C and as to the remaining two undivided equal fourth parts thereof for his own use and benefit. Declaration of trust.

(*a*) Two stamps of 10s. to be adjudicated. Where land is purchased by two or more persons who intend to hold the property in equity as tenants in common the property should ordinarily be conveyed to them as joint tenants upon trust for sale, or to them upon the statutory trusts in accordance with the provisions of section 34 of the Law of Property Act, 1925. It may, however, be convenient especially while the war lasts to have the legal estate conveyed to one person who will administer the property for the other beneficiaries. This agreement is intended to give effect to such an arrangement.

Covenants:

2. Each of the parties hereto hereby covenants with the others and other of them as follows:—

To pay mortgage;

(a) To pay or contribute a due proportion of the principal moneys and interest secured by the said mortgage or by any other mortgage or incumbrance for the time being affecting the premises as and when required so to do;

To pay taxes;

(b) To pay or contribute a due proportion of all rates taxes premiums of insurance and other outgoings including any instalment of war damage contribution (*b*) or indemnity in respect thereof payable in respect of the premises

To pay costs;

(c) To pay or contribute a due proportion of all costs charges and expenses of or incidental to the negotiation and completion of the said conveyance and the said mortgage and any expense already incurred by the Trustee and of all costs charges and expenses which may hereafter be incurred by the Trustee relating to the same or in the execution of the costs of these presents

To keep indemnified.

(d) To keep indemnified every other party hereto from all actions claims or demands incurred or to be incurred by such last mentioned party by reason of any default on the part of the covenanting party in performing his obligations under paragraphs (a) to (c) inclusive in this clause.

Proportion in which liabilities payable.

3. The due proportion which each party hereto shall be liable to pay or contribute pursuant to any paragraph of clause 2 of these presents shall be a sum bearing the same proportion to the aggregate sum required to be paid by all the parties hereto under such paragraph as the beneficial share of the said party in the premises bears to the whole of the premises and all payments or contributions shall be made to a special account to be opened in the name of the Trustee at the —— branch in the —— Bank upon which account the Trustee shall be entitled to draw.

Powers of Trustee.

4. The said B and C hereby respectively declare that the Trustee shall have power at all times during the continuance of these presents to do all or any of the following acts or things namely:

(a) to demise or let the premises or any part thereof to accept surrenders of leases to determine tenancies and make allowances to and arrangements with lessees and tenants of the same for the time being

(b) to demand sue for and receive all rents and profits receivable in respect of the premises or any part thereof and to appoint collectors and agents to receive the same

(c) to distrain or re-enter upon the premises or any part thereof in respect of which default in payment of rent has been made and to take and to use all other lawful proceedings and means for recovering and securing payment of the said rent and profits and for obtaining and retaining possession of the premises or such part thereof as aforesaid and for compelling performance or observance of any stipulation contained in any lease or tenancy affecting the premises or any part thereof

(*b*) The instalments of the war damage contribution payable under the War Damage Act, 1941, are not outgoings but payments of a capital nature and provision should be made for their payment: *Re Jacobs and Stedman's Contract*, [1942] W. N. 147.

(d) to prosecute or defend any action or proceedings in relation to the premises or any part thereof

(e) to sell or mortgage the premises or any part thereof and to effect the transfer of any mortgage or incumbrance for the time being affecting the premises or any part thereof in such manner as the Trustee shall think fit and for any of the purposes aforesaid to execute and do such assurances and acts as he shall think proper.

Applicati of rents.

5. THE Trustee shall out of the rents and profits of the premises in the first place pay the rates taxes premiums for insurance and outgoings and the instalments of the war damage contribution (*c*) or any indemnity in respect thereof for the time being payable in respect of the premises or any part thereof the costs of executing the trusts of these presents and any interest for the time being due in respect of the said mortgage or any mortgage or incumbrance affecting the premises.

Discharg mortgage

6. THE Trustee may out of any money received by him in respect of any sale or mortgage as aforesaid or by any other reasonable means when and if he shall think fit pay or discharge the principal moneys secured by the said mortgage or by any other mortgage or incumbrance for the time being affecting the premises or any part thereof.

Power to appoint trustees.

7. IN the event of a sale of the premises or any part thereof the Trustee shall have power to appoint any person or persons not exceeding three in number to act jointly with him in such sale and who shall be parties to the conveyance of the premises or any part thereof in order to give an effective receipt for the purchase moneys according to the requirements of the Trustee Act, 1925.

Arbitrati clause.

PROVIDED ALWAYS and it is hereby agreed and declared by and between the parties hereto that in the event of any dispute arising out of the terms of this agreement the matter shall be placed before H solicitor a member of the firm of H & Co. of *etc.* whose decision on such matter shall be final and binding upon each of the parties hereto and in the event of the said H being unable or unwilling to act herein such dispute as aforesaid shall be placed before one of the members of the said firm of H & Co. whose decision shall be final and binding upon each of the parties hereto.

IN WITNESS *etc.*

(*c*) The instalments of the war damage contribution are capital payments (see s. 82 of the War Damage Act, 1941), and, if no provision were made for their payment, they would fall to be paid out of capital. Generally it will not be convenient to raise the instalments out of capital and it will be advisable to make them payable out of income.

Form 18.

Agreement by a Landlord and Tenant for the Reinstatement by the Landlord of a Dwelling-house suffering War Damage where a Payment of Cost of Works is to be made the Obligation of the Tenant pursuant to a Notice of Retention being released and the Parties agreeing to Certain Alterations and Additions being made to the buildings (*a*).

Parties. THIS AGREEMENT is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Landlord") of the one part and B of *etc.* (hereinafter called "the Tenant") of the other part

Recitals: WHEREAS:—

Lease; (1) By a lease made the —— day of —— 19— BETWEEN the Landlord of the one part and the Tenant of the other part the dwelling-house known as —— situate at —— with the appurtenances thereof was demised to the Tenant from the —— day of —— 19— for the term of —— years at the yearly rent of £*y*.

War damage; (2) On or about the —— day of —— 19— the premises comprised in the said lease were rendered unfit by reason of war damage.

(*a*) Stamp 6d. Neither the War Damage Act, 1941, nor the Landlord and Tenant (War Damage) Acts, 1939 and 1941, prohibits landlords and tenants coming to some agreement as to the reinstatement of premises suffering war damage. Under s. 9 (1) of the War Damage Act, 1941, a payment of cost of works will be made to the person by whom the cost of executing the works is incurred. Therefore whether the landlord or tenant gets the payments depends upon which does the work. Under s. 5 of the Landlord and Tenant (War Damage) (Amendment) Act, 1941, where a tenant is under an obligation under the principal Act of 1939 to render land fit, the obligation is to be deemed, as from the date when the determination of the Commission to make a payment of cost of works becomes final, to be an obligation to reinstate as soon as is reasonably practicable the land in the form in which it existed immediately before the occurrence of the damage, subject to any requirements imposed by the Commission as to the nature of the works, the materials to be used therefor or otherwise. Sub-s. (2) provides for the settlement of disputes by the Commission and the transfer by the Commission of the obligation to reinstate to the other party to the lease, if the party originally under that obligation fails to reinstate within a reasonable time. Sub-s. (3) further provides that the Commission may, on the application of the landlord or the tenant, direct that the reinstatement shall include alterations and additions, any extra cost being borne by the applicant.

(3) Pursuant to the provisions of section 4 (2) (b) of the Landlord and Tenant (War Damage) Act 1939 the Tenant by a notice of retention dated the —— day of —— 19— and duly served on the Landlord stated that he elected to retain the said lease on the terms specified in the said Act. Notice of retention;

[*Or*, Pursuant to the provisions of section 4 (3) of the Landlord and Tenant (War Damage) Act 1939 the Landlord served a notice to elect on the Tenant and the Tenant did not comply therewith so that the Tenant is to be deemed to have served a notice of retention [*or*, and the Tenant pursuant thereto duly served a notice of retention dated the —— day of —— 19— on the Landlord stating that he elected to retain the said lease on the terms specified in the said Act].]

(4) By reason of the service of the said notice[s] the Tenant has become liable pursuant to the provisions of section 10 of the said Act to render fit the land comprised in the lease so soon as is reasonably practicable. Liability to reinstate;

(5) The War Damage Commission have declared their intention of making a payment of cost of works in respect of the premises. Payment of cost of works;

(6) The extent of the war damage to the demised premises has been found to be greater than was first thought to be the case with the result that a considerable amount of reconstruction will be necessary and the Tenant in these circumstances does not wish to fulfil his obligation of rendering the land fit and the parties have accordingly agreed that the Landlord shall release the Tenant from his said obligation and himself reinstate the premises with the alterations and additions hereinafter specified upon the terms and conditions hereinafter mentioned. Agreement.

IT IS HEREBY AGREED as follows:—

1. The Landlord hereby releases the Tenant from his obligation under the provisions of the Landlord and Tenant (War Damage) Act 1939 or otherwise to render the demised premises fit. Release of tenant's obligation.

2. The Landlord shall at his own cost render fit reconstruct and reinstate in a good substantial and workmanlike manner the said dwelling-house and shall at his own cost erect build and complete the several alterations and additions to the said Reinstatement by landlord.

dwelling-house which have been agreed between the parties and are shortly specified in the First Schedule hereto the said reconstruction and reinstatement alterations and additions being erected built and completed with the best materials of their several kinds and in accordance with the plans and specifications which have been respectively signed by the Landlord and Tenant.

Alterations and additions.

3. The Landlord shall at his own cost demolish the stabling and outhouses coloured blue on the plan annexed hereto and shall erect and build on the site of such stabling and outhouses a garage in a good substantial and workmanlike manner and with the best materials in accordance with the plans and specifications which have been signed by the Landlord and Tenant.

Requirements of War Damage Commission.

4. In the event of the War Damage Commission giving directions requiring the use of materials other than those agreed in the said specifications or giving any other directions as to the nature of the works to be executed the Landlord shall comply with the said directions and requirements of the said Commission and the Tenant shall raise no objection and shall be entitled to no compensation by reason of the fact that the Landlord has not completed the said reconstruction reinstatement alterations and additions and the erection of the said garage in accordance with the said plans and specifications.

Interest on cost of additional works.

5. In the event of the total cost of all the aforesaid works exceeding the amount of the payment of the cost of works the tenant shall from the date of the completion of all the said works pay to the Landlord in addition to his rent £6 per cent. per annum on such part of the excess as is attributable to the said alterations and additions and the erection of the said garage.

Supervision by architect.

6. The said works shall be executed under the direction of X and to the satisfaction in all respects of X or other the architect for the time being appointed by the Landlord and Tenant in writing.

7. No additional works shall be done by the Landlord other than any which may be directed by the said Commission without the consent in writing of the Tenant and should any additional works be executed the Tenant shall not be required to pay interest under clause 5 hereof on such cost.

8. The Landlord will forthwith use his best endeavours to obtain the consent of the said Commission and all other necessary consents if any of the Local or other Authorities to the execution of the said works and will immediately after he has obtained all such necessary consent or consents begin to execute the said works and complete the same with all reasonable diligence. Consent of Commission.

9. All matters of difference in relation to this agreement shall be referred to two arbitrators one to be appointed by each party and their umpire according to the provisions of the Arbitration Acts 1889 and 1934. Arbitration.

As witness *etc.*

The Schedule.

[*To contain short particulars of the alterations and additions.*]

Form 19.

CONTRACTS FOR SALE OF LAND—WAR CLAUSES (*a*).

I.

Instalments of the War Damage Contribution (*b*).

A.

The instalments of the war damage contribution payable under the War Damage Act 1941 or any indemnity in respect thereof shall not be deemed to be an outgoing and shall not be apportionable between the vendor and the purchaser but shall be borne and paid by the person liable to pay the same under the provisions of the said Act.

B.

The instalment of the war damage contribution payable under the War Damage Act 1941 or any indemnity in respect thereof shall be deemed to be an outgoing accruing in respect of the year in which it is payable and shall be apportionable accordingly.

C.

Pending (*c*) completion of the purchase all instalments of the war damage contribution or any indemnity in respect thereof payable under the War Damage Act 1941 and any tax charge or liability substituted therefor by any Act or Acts payable after the date hereof shall be borne by the purchaser and in the event of the same being paid by the vendor the purchaser will within seven days after the production of the receipt for the payment of the same repay the sum so paid to the vendor.

(*a*) It is impossible to provide for all the difficulties peculiar to war which may have to be considered on the sale of land, but the three matters dealt with in these forms arise in practically every case and always require to be borne in mind.

(*b*) Apportionment clauses with respect to the instalments of the war damage contribution payable under the War Damage Act, 1941, and any indemnity in respect thereof were published in the Conveyancer and Property Lawyer (Vol. 6, pp. 329—336), and the subject was considered at length by Dr. Walford (Vol. 6, p. 19). The first forms published were somewhat elaborate and were designed to provide for the complications which would arise if the amount of instalments of the war damage contribution were increased or decreased or the risk period was altered. Since the War Damage (Amendment) Act, 1942, came into operation, which has extended the risk period indefinitely, and since the amount of the instalments appears to have become crystallised for the time being, in most contracts of sale, where completion is taking place shortly, it will not be necessary to make any elaborate provision for the payment or apportionment of the war damage contribution. It must be remembered that the instalments of the contribution are not outgoings and will not be apportioned between vendor and purchaser under any common form provisions for apportionment of outgoings: *Re Jacobs and Stedman's Contract*, [1942] Ch. 400; *Re Watford Corporation and Ware's Contract*, [1943] W. N. 17. It is advisable to state explicitly whether the contribution is to be apportioned or not, so that at the time of the contract the parties may have the matter in mind.

(*c*) In cases where completion is postponed for a considerable period owing to the purchase price being payable by instalments or for any other reason, the vendor, as owner of the proprietary interest in the property, is, under the War Damage Act, 1941, s. 23, liable to pay the instalments: *Re Watford Corporation and Ware's Contract*, [1943] W. N. 17. In such a case, it would seem that, as the purchaser under s. 46 (3) of the Act will be entitled to the benefit of any value payment should the property suffer war damage, the contract should provide for his indemnifying the vendor in respect of the whole, or part at least, of the instalments payable pending completion.

II.

Provisions for Requisition (*d*).

A.

In the event of a valid notice to requisition the whole or any part of the premises being served by a competent authority or in the event of the premises being requisitioned by such an authority the vendor shall forthwith give notice thereof to the purchaser and the purchaser may within seven days after the receipt of such notice give notice in writing to the vendor rescinding the purchase and thereupon the sale shall be annulled and the purchaser shall be entitled to [a release and] return of his deposit but without interest costs or compensation [*or* but the vendor shall be entitled to [a release of] retain the deposit paid by the vendor].

B.

The service of a notice of requisition by a competent authority or the requisition of the premises in whole or in part before completion shall not annul the sale or entitle the purchaser to any compensation.

III.

Sale of Agricultural Land with Vacant Possession. Provisions in the Event of Possession being Taken by the War Agricultural Executive Committee Before Completion or Their Approval to the Sale being Refused (*e*).

A.

The purchase shall be completed on the —— day of —— when the vendor will vacate the premises but the sale shall not be affected

(*d*) Where there is a contract to sell land with vacant possession, the effect on the contract of a notice to requisition property served before completion depends, it seems, on whether possession of the premises has actually been taken by the requisitioning authority before that date. Where there has merely been the service of a notice of intention to requisition, the contract cannot be avoided by the purchaser: *Re Winslow Hall Estates Co. and the Contract of United Glass Bottle Manufacturers, Ltd.*, [1941] Ch. 503. However, if the authority takes possession before the time fixed for completion, the vendor cannot give vacant possession and the purchaser can repudiate the contract: *Cook* v. *Taylor*, [1942] Ch. 349. In these circumstances it is generally advisable to make express provision for the service of a notice of requisition or for requisition, so that the rights of the parties may not depend upon the chance whether possession is taken before or after the date fixed for completion.

(*e*) The Defence (General) Regulations, 1939, Reg. 51, authorises a competent authority, if it appears to that authority to be necessary for maintaining supplies essential to the life of the community, to take possession of any land. Reg. 62 confers wide powers on the Minister of Agriculture and Fisheries to give directions with respect to the cultivation, use or management of land for agricultural purposes, and he may from time to time make contracts for the occupation of land.

The powers conferred by Regs. 51 and 62 have by the Cultivation of Lands Order, 1939, together with other powers been delegated by the Minister to the persons who have been appointed the War Agricultural Executive Committees for the counties. Mr. W. B. Howdle, of Howden, Yorks, has kindly written drawing attention to the fact that on a sale of agricultural land with vacant possession the local War Agricultural Executive Committee insists on approving the new occupier and will, if such occupier is not approved by the Committee, themselves take possession of the land before completion and let it under their powers. It is therefore necessary, where agricultural lands are sold and it is a term of the sale that vacant possession shall be given, that provisions should be made to meet the case of the Committee going into possession before completion.

We are indebted to Mr. Howdle for this form.

nor completion be delayed if for any reason or from any cause whatever the purchaser does not then take or is prevented from obtaining possession.

B.

The purchaser shall on or before the —— day of —— at his own cost apply for and endeavour to obtain the approval of the War Agricultural Executive Committee to his taking possession of the premises and in case such approval shall not be obtained on or before the —— day of —— next or such later date as the vendor and purchaser shall agree to this sale shall be void and the purchaser's deposit shall be [released and] returned to the purchaser but without any interest costs or compensation [*or* but the purchaser shall not be entitled to the [release or] return of the deposit and the same shall be [released to or] retained by the vendor].

Form 20.

1.

Agreement for Sale by Administrators of an Intestate of the Intestate's Business to a Company Formed for the Purpose of Carrying on the Business for the Benefit of the Intestate's Family (*a*).

Parties. THIS AGREEMENT is made the —— day of —— 19— BETWEEN A B of *etc.* and C B of *etc.* (hereinafter together called "the Vendors") of the one part and K B & Co. Ltd. whose registered office is situate at —— in the county of —— (hereinafter called "the Company") of the other part

WHEREAS:—

Recitals: of business and intestate; (i) At the time of his death K B (hereinafter called "the Intestate") was carrying on for his own account at and from —— the business (hereinafter referred to as "the said business") of a demolition contractor builders merchant and the like now carried on under the style of "K B & Co."

of death; (ii) The Intestate died on the —— day of —— 19— intestate and letters of administration in respect of his estate were on the —— day of —— 19— granted to the Vendors out of the Principal Probate Registry

of carrying on business; (iii) Ever since the date of the death of the Intestate the Vendors as his personal representatives have with the full knowledge and approval of all those persons who are beneficially interested in the Intestate's estate been carrying on the said business and the Vendors with the like approval are still carrying on such business

of formation of company. (iv) The Company has been formed under the Companies Act 1929 with a nominal capital of £10,000 divided into 10,000 shares of £1 each with a view (amongst other things) to the acquisition of the said business and the assets thereof

(v) By clause — of the articles of association of the Company it

(*a*) This and the next three forms were drafted by Mr. C. R. D. Richmount, of Lincoln's Inn. Stamp *ad valorem*.

is provided that the Company shall enter into the agreement therein referred to being this agreement

NOW IT IS HEREBY AGREED as follows:—

1. The Vendors as the personal representatives of the Intestate shall sell and the Company shall purchase:— Sale:

First the goodwill of the said business with the exclusive right to use the name "K B & Co." as part of the name of the Company and represent the Company as carrying on such business in continuation of that carried on as aforesaid by the Vendors and the right to use the words "late K B & Co." or any other words indicating that the business is carried on in continuation of or succession to the said business as the same is now being carried on by the Vendors and all (if any) trade marks connected therewith of goodwill;

Secondly all the leasehold hereditaments respectively specified in the Schedule hereto of leaseholds;

Thirdly all the plant machinery office furniture patents and licences (if any) motor and other vehicles stock-in-trade petrol pumps implements loose tools and utensils and horses to which the Vendors are entitled in connection with the said business of plant;

Fourthly all the book and other debts due to the Vendors in connection with the said business and the full benefit of all securities (if any) for such debts of book debts;

Fifthly the full benefit of all pending contracts engagements and orders in connection with the said business of benefit of contracts;

Sixthly all cash in hand and at the bank all bills and notes of the vendors in connection with the said business of cash.

Seventhly all other (if any) property to which the Vendors are entitled in connection with the said business.

2. (i) Part of the consideration for the said sale shall be the sum of £10,000 which shall be paid and satisfied as follows namely as to £10 in cash and as to the balance thereof namely £9,990 by the allotment to the Vendors or their nominees of 9,990 fully paid up ordinary shares in the capital of the Company of £1 each to be numbered 1 to 9,990 inclusive As to consideration.

(ii) As to the residue of the consideration for the sale the Company shall undertake to pay and satisfy discharge and fulfil all the debts liabilities (including in particular that in favour of —— Bank Limited) contracts and engagements of the Vendors in relation to the said business and shall indemnify them and the estate and effects of the Intestate against all proceedings claims and demands in respect thereof.

3. (i) The title to the said leasehold hereditaments shall commence with the leases under which the same are held by the Vendors and the Company shall accept the Vendor's title to such hereditaments without either investigating the same or making any requisition or objection in respect thereof As to bills.

(ii) The Company shall further accept the statement of the Vendors (the same statement being evidenced by this sub-clause) that prior to this agreement the Vendors have not executed any assurance or assent dealing with or disposing of or otherwise in relation to any legal estate in respect of the said leasehold hereditaments or any of them or any part or parts respectively thereof.

As to leaseholds.

4. The said leasehold hereditaments are sold free from incumbrances except the rents and covenants contained in the leases under which the same are held and to all rights of way, light and other easements, if any, affecting the same respectively and to all existing tenancies and agreements or underleases therefor.

Description.

5. The description of the said several hereditaments is believed to be correctly set forth in the several leases referred to in the said Schedule hereto and the Company shall not be entitled either to annul the sale or to claim any compensation should any error in respect of the descriptions aforesaid or any of them be found.

Completion.

6. The purchase shall be completed on the —— day of —— 19— at the office —— of Messrs. —— the Vendor's solicitors when possession of the premises shall as far as practicable be given to the Company and the consideration aforesaid so far as the same consists of cash and shares shall be paid and satisfied subject to the provisions of this agreement and thereupon the Vendors and all other necessary parties (if any) shall at the expense of the Company execute and do all such assurances and things as shall or may be necessary for the purpose of vesting the said premises in the Company and giving to it the full benefit of this agreement Provided Always that if the consent or consents of any person or persons to the vesting in the Company of the said leasehold hereditaments or any of them shall be necessary and it shall be found that such consent or consents cannot conveniently be obtained the Vendors shall execute a declaration of trust (the same to be in a form to be approved by the Vendors) of such hereditaments in favour of the Company or otherwise deal with the same hereditaments as the Company shall direct and the Company shall accept any such declaration of trust as sufficient completion on the part of the Vendors in respect of their sale of the hereditaments aforesaid under the provisions of this agreement.

Leases already produced.

7. The leases under which the said leasehold hereditaments are held have already been submitted to the Company for inspection and accordingly the Company shall be deemed to have entered into this agreement with full notice of the contents purport and effect of such leases and each of them.

Possession.

8. The possession of the said leasehold hereditaments shall be retained by the Vendors up to the date hereinbefore fixed for completion and in the meantime they shall carry on the said business in the same manner as heretofore so as to maintain the same as a going concern and they shall as from the said date fixed for completion be deemed to be carrying on the said business on behalf of the Company and be entitled as well as the estate and effects of the Intestate to be indemnified accordingly.

9. The Vendors shall covenant with the Company and shall cause those persons who are interested in the Intestate's residuary estate and who are now employed in or about the said business to covenant with the Company that they will not at any time within a period of five years from the date hereof either solely or jointly with or as manager or agent for any other person or persons or company directly or indirectly carry on or be engaged or concerned or interested in any of the businesses following that is to say demolition contractors public works contractors transport contractors and agents and builders merchants within 100 miles of —— in the county of —— save so far as the Vendors or such persons shall as members of the Company be employed in the business of the Company. Covenant of Vendors.

10. Of the consideration payable by the Company under the foregoing provisions of this agreement £—— is the consideration for the sale of the goods chattels moneys and other effects capable of manual delivery and forming part of the purchased property. As to consideration.

11. All books of account of the said business and all books of reference to customers and all other books and documents relating exclusively to the said business shall be delivered by the Vendors to the Company on completion and the Company thenceforth shall subject as hereinafter provided be entitled to the custody thereof and to the use thereof for the purposes of its business Provided Always that the Vendors shall have free access at all reasonable times to such books and documents for the purpose of enabling them effectively to complete their administration of the Intestate's estate. As to documents.

12. The Company shall pay or refund to the Vendors:— As to costs.

(a) The costs of and incidental to the preparation and execution of this agreement including any stamp thereon

(b) The costs of the Vendors in relation to the preparation and printing of the Memorandum and Articles of Association of the Company

(c) The costs of the registration of the Company

(d) The costs of all stamps fees and legal expenses incidental to the formation of the Company and generally all preliminary expenses whatever incurred in relation to the Company down to the first general allotment of shares.

13. The Company shall cause this agreement to be duly delivered to the Registrar of Companies for registration pursuant to section 42 of the Companies Act 1929 and in case of shares allotted to the Vendors' nominees such further documents as together with this agreement will amount to a contract constituting the title of such nominees. Registration of agreement.

14. Any notice hereunder may be served on the Vendors by sending the same through the post addressed to them at their respective addresses hereinbefore set out and shall be deemed to have been served within twenty-four hours after the same shall have been posted. Notices.

In witness *etc.*

The Schedule above referred to.

2.

Agreement Between the Administrators and the Beneficiaries as to the Division of the Company's Shares Among Themselves (*b*) (*c*).

Parties. THIS AGREEMENT is made the —— day of —— 19— BETWEEN A B of *etc.* and C B of *etc.* (hereinafter together called "the Administrators") of the first part and the said A B and C B and the SEVERAL OTHER PERSONS whose respective names and addresses are set forth in the First Column of the Schedule hereunder written (all of whom (including the said A B and C B) are hereinafter collectively called "the Beneficiaries") of the second part and K B & Co. Ltd. whose registered office is at —— in the county of —— (hereinafter called "the Company") of the third part SUPPLEMENTAL to an Agreement (hereinafter referred to as "the Sale Agreement") dated the —— day of —— 19— and made between the Administrators of the one part and the Company of the other part whereby and whereunder (a) the Administrators have agreed to sell and the Company has agreed to purchase the goodwill and assets of the business therein more particularly mentioned and now carried on by the Administrators under the style of K B & Co. and (b) upon and at the completion of the aforesaid sale and purchase the Company is liable to allot to the Administrators or their nominees 9,990 fully paid up shares numbered 1 to 9,990 (inclusive) of £1 each in the capital of the Company

Recitals: WHEREAS:—

(i) As appears from and in the Sale Agreement the Administrators have entered into and become parties to the same as the personal representatives of K B (hereinafter called "the Intestate") late of —— in the county of —— who died on the —— day of —— 19— intestate

(ii) Under the provisions of the Administration of Estates Act 1925 and in the events which have happened the Beneficiaries between them are entitled to the Intestate's residuary estate in the proportions appearing and set out opposite their respective names in the Second Column of the said Schedule hereto wherefore the Administrators will upon their completing the administration of the Intestate's estate be liable to distribute the residuary estate aforesaid (including any shares in the Company to which they shall be entitled under or as a result of the provisions of the Sale Agreement) amongst the Beneficiaries in the proportions aforesaid

(iii) The Administrators as the personal representatives of the Intestate have agreed with the Beneficiaries that they will procure that the Company shall allot the said 9,990 shares of £1 each in the Sale Agreement provided for to and amongst the Beneficiaries in the proportions in which the Beneficiaries are entitled to the residuary estate of the Intestate and in pursuance of such agreement the Administrators

(*b*) A consequential formal allotment of the shares to the respective beneficiaries is, of course, necessary.

(*c*) Stamp 10s.

have required the Company to allot such 9,990 shares of £1 each in manner hereinafter provided which the company has agreed to do

NOW IT IS HEREBY AGREED as follows:—

As to allotment of shares to beneficiaries.

1. The Company by the direction of the Administrators (testified by their signing this agreement) hereby agrees with the Beneficiaries and each of them that upon completion of the Company's purchase provided for by and in the Sale Agreement the Company will allot the said 9,990 shares of £1 each numbered 1 to 9,990 (both inclusive) in the capital of the Company in the Sale Agreement referred to amongst and to the Beneficiaries in manner appearing in and in accordance with the provisions of the Third Column of the said Schedule hereto and so that each of the Beneficiaries shall upon the completion aforesaid become and be entitled to and be registered as a member of the Company in respect of those shares whereof particulars are set forth opposite his or her name in the aforesaid Third Column And the shares so to be allotted as aforesaid shall be credited as fully paid up shares as provided by and in the Sale Agreement.

2. The Administrators hereby agree with the Company and declare that upon the Company effecting the allotments provided for in clause 1 hereof the obligations of the Company under the Sale Agreement to allot to the Administrators or their nominees 9,990 fully paid up shares of £1 each numbered 1 to 9,990 (both inclusive) in the capital of the Company will have been fully satisfied and discharged.

3. Each of the Beneficiaries by signing this agreement hereby declares and confirms unto the Administrators and the Company and each of them that he or she (as the case may be) hereby approves the sale intended to be effected by the Administrators under and pursuant to the Sale Agreement.

IN WITNESS *etc.*

THE SCHEDULE above referred to.

Name and address of Beneficiary.	The proportion of his interest in the Intestate's estate.	The shares (numbered) in the Company to be allotted to him.
1. A B	1/9th	1,110, nod. 1 to 1,110 inclusive
2. C B	1/9th	1,110, nod. 1,111 to 2,220 inclusive
3 to 9 (other beneficiaries)		

3.

Declaration of Trust by the Administrators to Hold the Leasehold Properties upon Trust for the Company (*d*).

Parties.

THIS DECLARATION OF TRUST is made the —— day of —— 19— BETWEEN A B of *etc.* and C B of *etc.* (hereinafter together called "the

(*d*) Stamp 10s.

Trustees") of the one part and K B & Co. Ltd. whose registered office is at —— in the county of —— (hereinafter called "the Company") of the other part

Recitals:

WHEREAS:—

of death of intestate;

(i) At the time of his death on the —— day of —— 19— K B (hereinafter called "the Intestate") late of *etc.* was the estate owner of the properties shortly described in the First Column of the Schedule hereto in respect of the several terms of years limited out of the fee simple respectively thereof granted by the several leases under which the several parts thereof are respectively held as shown in the Second and Third Columns of the Schedule aforesaid

(ii) Letters of Administration in respect of the estate of the Intestate were on the —— day of —— 19— granted to the Trustees out of the Principal Probate Registry

of sale agreement;

(iii) Under and by virtue of an agreement in writing dated the —— day of —— 19— and made between the Trustees of the one part and the Company of the other part and the events which have happened since the date of such agreement namely the completion by the Company of its purchase thereunder and therein provided for the Company is now entitled in equity to the said leasehold properties respectively described in the Schedule hereto

no prior assent;

(iv) The Trustees as the legal personal representatives of the Intestate have not prior to the date of these Presents executed or made any assurance or assent affecting any legal estate in the said leasehold properties or any of them or any part or parts thereof

(v) The leasehold properties aforesaid are now subjected to the tenancies whereof short particulars are set out in the Fourth Column of the said Schedule hereto

agreement.

(vi) The Company has requested the Trustees to execute such Declaration of Trust in favour of the Company in relation to the aforesaid leasehold properties pending the assignment thereof respectively to the Company as is hereinafter contained: And the Trustees have agreed to accede to the Company's said request subject as hereinafter provided

NOW THIS DEED made in pursuance of the recited agreement WITNESSETH as follows:—

1. The Trustees as the legal personal representatives of the Intestate hereby agree with the Company and declare that the Company is in equity solely and beneficially entitled to each of the several leasehold properties shortly described in the said Schedule hereto.

Covenant by trustees to hold leaseholds on behalf of company;

2. The Trustees hereby covenant with the Company and declare that pending an assignment of the said several leasehold properties aforesaid to the Company they the Trustees as the legal personal representatives of the Intestate will:—

(a) Stand possessed of such leasehold properties and each of them and every part thereof respectively upon trust for the Company absolutely to the intent and so that henceforth the Company shall receive and enjoy for its own absolute use and benefit the net rents and profits

of each of the same properties pending any sale thereof and the net proceeds to arise from any such sale: Provided Always and it is hereby expressly agreed by and between the Trustees and the Company and declared (i) that the Company shall at all times hereafter duly and punctually pay the respective rents reserved by and under the several leases referred to in the said Schedule hereto and all other sums which by way of rates or contributions under the War Damage Acts or otherwise shall be from time to time payable by the lessees under the aforesaid leases (ii) that the Company shall at all times hereafter keep the Trustees and each of them and their respective executors and administrators and effects and the estate and the effects of the Intestate fully and effectually indemnified against all actions proceedings claims demands costs charges and expenses which shall or may at any time hereafter be suffered borne or incurred by them or either of them by reason of the non-payment of either the respective rents reserved by the leases aforesaid or any sums by way of rates or contributions under the War Damage Acts or otherwise for which the Trustees shall or may be liable as lessees under such leases or any breach or non-performance or non-observance of the covenants on the part of the lessee and conditions respectively contained in the same leases or any of them and (iii) that for the purpose of giving effect (in part or otherwise) to the foregoing indemnity the Trustees shall be entitled at any time hereafter and from time to time to apply any moneys for the time being in their hands or under their control for which they shall be accountable to the Company or otherwise belonging to the Company in or about remedying any breach (whether the same be that of non-payment of rent or not) of the covenants on the part of the lessee and conditions respectively contained in the said several leases referred to in the said Schedule hereto or any one or more of such leases

to assign leaseholds on request

(b) Upon being required so to do by the Company but at the sole cost and expense in all respects of the Company assign to or otherwise vest in the Company each of the said several properties described in the said Schedule hereto for all the residue then unexpired of the term of years created by the Lease (being that referred to in the same Schedule) under which the same shall be held by the Trustees subject nevertheless thenceforth to the payment of the rent reserved by and to the performance of the covenants and conditions respectively contained and set out in such lease and subject also to any tenancy or tenancies then affecting the same Provided Always that nothing hereinbefore contained shall impose upon the Trustees any obligation or duty to assign to or otherwise vest in the Company the properties aforesaid or any of them unless and until the Company shall have first obtained all or any licences or licence required or necessary for such purpose

(c) Pending any such assignment or vesting as is provided for by and in the preceding sub-clause deal with (by letting selling or otherwise) the said leasehold properties described in the Schedule hereto and each of them in accordance with the directions from time to time given to them by the Company PROVIDED ALWAYS that the Trustees shall not be required by the Company to enter into any contract or other

transaction which shall or may necessitate the undertaking by the Trustees of personal obligations or liability.

3. The Company hereby covenants with the Trustees and each of them (both in their personal capacity and in their capacity as the legal personal representatives of the Intestate) to give effect to and carry out and abide by the several provisions of clause 2 hereof so far as the same provisions are intended to impose obligations or duties upon and to restrict or subject to modifications the rights of the Company.

In witness *etc.*

The Schedule above referred to.

Short description of property.	Date and parties to Lease.	Term of years and rent payable.	Particulars of tenancy affecting same.

4.

Release by the Beneficiaries to the Trustees for Carrying On the Business of the Intestate and for Forming the Family Company (*e*).

THIS DEED OF RELEASE is made the —— day of —— 19— BETWEEN THE SEVERAL PERSONS whose names and addresses are set forth in the First and Second Columns of the Schedule hereunder written (hereinafter collectively called "the Beneficiaries") of the one part and A B of *etc.* and C B of *etc.* (hereinafter together called "the Administrators") of the other part Parties.

WHEREAS:— Recitals:

(i) K B (hereinafter called "the Intestate") late of *etc.* died on the —— day of —— 19— intestate and letters of administration in respect of the Intestate's estate were on the —— day of —— 19— granted out of the Principal Probate Registry to the Administrators of death intestate;

(ii) The Intestate was carrying on at the time of his death the business of (*inter alia*) [a demolition contractor]

(iii) The Administrators have long since paid and discharged the funeral and testamentary expenses of the Intestate and all claims made against them for estate duty but although they have paid those debts of the Intestate which were incurred by him otherwise than in connection with the said business the Administrators did not close down the Intestate's said business and forthwith discharge and pay the debts and liabilities of the Intestate in regard thereto of payme of debts;

(iv) In fact the Administrators as from the date of the Intestate's death and until the sale next hereinafter recited carried on the Intestate's said business and from time to time distributed the net profits made by them in connection therewith amongst the Beneficiaries And the Administrators retained for their own benefit and treated as an outgoing of the Intestate's said business remuneration to the extent following that is to say as to the said A B remuneration at the rate of £—— per annum and as to the said C B remuneration at the rate of £—— per annum. of carryin on busine by admin trators;

(v) By an agreement in writing (hereinafter referred to as "the Sale Agreement") dated the —— day of —— 19— and made between the Administrators of the one part and K B & Co. Ltd. (hereinafter called "the Company") of the other part the Administrators agreed to sell to the Company the goodwill and assets of the Intestate's said business at the price and upon and subject to the term and conditions therein more particularly mentioned and set out of sale agreemen

(vi) By the Sale Agreement part of the consideration payable by the Company was expressed to be the sum of £9,990 and the Company agreed to satisfy such sum by allotting to the Administrators or their nominees 9,990 fully paid up Ordinary Shares of £1 each in the capital of the Company And the Sale Agreement further provided that the

(*e*) Stamp 10s.

Company should discharge the debts and liabilities of the Administrators in relation to the Intestate's said business

(vii) By a further agreement (hereinafter referred to as "the Allotment Agreement") dated the —— day of —— 19— and made between the Administrators of the first part the Administrators and the Beneficiaries of the second part and the Company of the third part the Company by the direction of the Administrators agreed with the parties thereto of the second part (all of whom are of full age) to allot to and amongst them the said 9,990 Ordinary shares referred to in the Sale Agreement in the proportion in which they are interested in the Intestate's residuary estate and in particular in manner set forth in the Schedule thereto And by the Allotment Agreement the Beneficiaries confirmed and approved the sale intended to be effected by the Sale Agreement

(viii) The Beneficiaries entered into the Allotment Agreement with full notice and knowledge of the Sale Agreement and the purport and effect thereof

? balance
neet.

(ix) The Beneficiaries have been furnished with a copy of the balance sheet prepared by accountants appointed by the Administrators wherein are set forth full particulars of the assets used and the liabilities incurred and outstanding in connection with the Intestate's said business as on the —— day of —— 19— and wherein also appears the amount of the net profits of such business (after providing for the remuneration of the Administrators) for the —— months ending the said —— day of —— 19—

(x) In addition the Beneficiaries have been furnished by the Administrators with all such information as the Beneficiaries have required from the Administrators in relation to the aforesaid balance sheet and generally in connection with the Intestate's business and the carrying on thereof by the Administrators since the Intestate's death

(xi) The Administrators have requested the Beneficiaries to give and the Beneficiaries have agreed with the Administrators to grant to them such release and indemnity as is hereinafter contained and generally to confirm the dealings of the Administrators in connection with the Intestate's said business in manner hereinafter appearing

NOW THIS DEED made in pursuance of the recited agreement in that behalf WITNESSETH as follows:—

eclaration,
nfirmation
id release.

1. The Beneficiaries do and each of them doth hereby:—

(a) Confirm and declare that the Administrators have afforded to them him or her (as the case may be) all such information as they he or she have or has required of the Administrators in connection with the said business of the Intestate and the carrying on thereof by the Administrators from the date of the Intestate's death as hereinbefore recited

(b) Admit that except with the aid and under the management of the Administrators it would have been impossible properly to carry on the Intestate's said business and that the Administrators carried on such business as from the Intestate's death for the benefit of the Beneficiaries and with their or his or her (as the case may be) approval

(c) Confirm and approve the retention by the Administrators and each of them for their or his sole benefit remuneration by way of salary for or in respect of their management of the Intestate's said business for the period commencing as from the date of the Intestate's death and ending on the date upon which completion of the Company's purchase of such business under the provisions of the Sale Agreement shall take place

(d) Admit that they or he or she (as the case may be) have or has been afforded such information in regard to the remuneration retained as aforesaid by the Administrators as they or he or she has required of them

(e) Admit and declare (i) that the residuary estate of the Intestate is divisible amongst the Administrators and the Beneficiaries in the proportions set forth in the Schedule to the Allotment Agreement (ii) that the said 9,990 Ordinary shares in the Sale Agreement provided for would if allotted to the Administrators form part of the residuary estate aforesaid and (iii) that the allotment provided for by and in the Allotment Agreement in respect of the same 9,990 Ordinary shares is intended to be and is accepted in part distribution in specie of the same residuary estate amongst the persons beneficially entitled thereto

(f) To the extent of their or his or her (as the case may be) interests and ability release the Administrators and each of them and their respective executors and administrators from all claims demands actions and proceedings in respect of the retention and carrying on by the Administrators of the Intestate's said business or in respect of any dealing on the part of the Administrators in connection therewith or anything done or omitted by the Administrators or either of them in respect of the same business or otherwise in relation thereto

(g) For the purpose of removing all doubts declare that by virtue of the foregoing release the Administrators are and each of them is forever hereafter absolutely absolved and released from all liability or obligation further to account for their or his dealings with the Intestate's said business and the moneys (whether gross takings or net profits) thereof from time to time received by or on behalf of the Administrators or either of them in the course of their carrying on such business during the period hereinbefore mentioned

(h) Declare and admit that he or she (as the case may be) has granted to the Administrators and each of them the release hereinbefore set out and generally has entered into and become a party to these presents voluntarily and that he or she (as the case may require) has read in full and properly understands the purport and effect of this deed.

In witness *etc.*

The Schedule above referred to.

Name of Beneficiary.	*Address.*

Form 21.

Deed between a Debtor Company and Surety and Two Creditors for Different Sums Whereby as between the Company and Surety and the Creditors the Debts which are to be Reduced are Deemed to be One Debt Repayable by Instalments (*a*).

THIS DEED is made the —— day of —— 19— BETWEEN —— Limited whose registered office is at *etc.* (hereinafter called "the Company") of the first part A B of *etc.* (hereinafter called "the Surety") of the second part X Y of *etc.* (hereinafter called "Mr. Y") of the third part and A Z of *etc.* (herinafter called "Mr. Z") of the fourth part

WHEREAS :—

(i) Accounts have been taken as between the Company and Mr. Y and Mr. Z for the purpose of determining the sum now owing by the Company to each of them Mr. Y and Mr. Z in respect of loans made by him to the Company and it has been ascertained (as the several four parties hereto admit and agree testified by their respectively executing this deed) that the sum so owing to Mr. Y is £A and that the sum so owing to Mr. Z is £B

(ii) It has been agreed by and between the several parties hereto that such sums of £A and £B shall be repaid to Mr. Y and Mr. Z respectively in manner hereinafter appearing and that the Surety shall join in this deed in manner and for the purposes hereinafter appearing

(iii) At an extraordinary general meeting [board meeting duly convened for that purpose] of the Company duly held on the —— day of —— 19— a resolution was duly passed as a resolution of the Company [board] to the effect that such meeting approved the arrangements intended to be carried out by the deed then placed before it (being in fact this deed) and that the directors were thereby authorised duly to affix the seal of the Company to such deed

NOW THIS DEED made in pursuance of the recited agreement and for the valuable considerations hereinafter appearing WITNESSETH as follows :—

1. (i) THE Company shall immediately after the execution of this deed pay to Mr. Y the sum of £C in or towards reduction of the said sum of £A thereby leaving a sum of £D owing and remaining unpaid by the Company to Mr. Y in respect of moneys lent by Mr. Y to the Company.

(ii) The Company shall immediately after the execution of this deed pay to Mr. Z the sum of £E in or towards reduction of the said sum of £B thereby leaving a sum of £D owing and remaining unpaid by the Company to Mr. Z in respect of moneys lent by Mr. Z to the Company

(*a*) This form was drafted by Mr. C. R. D. Richmount of Lincoln's Inn. Stamp should be adjudicated. If the creditors are directors of the debtor company it is desirable that the deed should first be approved by the Company in General Meeting. The form was designed so as to prevent one of the creditors from seeking by proceedings or otherwise an advantage over his co-creditor without the latter's knowledge or consent.

(iii) For the purposes of the arrangements hereby intended to be carried out the aggregate amount namely £G of the aforesaid two outstanding sums of £D each shall as between the Company and the Surety on the one hand and Mr. Y and Mr. Z on the other hand be deemed to constitute one whole debt payable and owing to Mr. Y and Mr. Z on a joint account

(iv) Mr. Y and Mr. Z shall be deemed to have agreed to accept payment of the aforesaid debt or sum of £G by means of the instalments hereinafter provided at the request of both the Company and the Surety and conditionally upon the Surety agreeing with them to enter into the covenants and agreements on his part respectively hereinafter contained.

2. The Company and the Surety hereby jointly and severally covenant (to the intent that each of the covenants hereinafter contained shall be deemed to be a separate covenant) with Mr. Y and Mr. Z and each of them as follows :—

(i) To pay to Mr. Y and Mr. Z or the survivor of them the said debt or sum of £G hereinbefore referred to by twelve equal consecutive monthly instalments of £H each payable as follows namely the first of such twelve instalments to be paid on the —— day of —— 19— and the second and each succeeding one of such instalments to be paid respectively on the —— day of each of the next succeeding eleven months computed as from the —— day of —— 19—

(ii) In the event of any one of the said twelve instalments of £H each hereinbefore made payable by the Company and the Surety being in arrear and remaining unpaid for seven clear days after the day fixed by and in sub-clause (i) of this clause for the payment thereof immediately after the expiration of such period of seven clear days and without any previous demand by Mr. Y and Mr. Z or either of them in that behalf To pay to Mr. Y and Mr. Z or the survivor of them the whole of the said debt or sum of £G or the sum representing the balance of such sum of £G then remaining unpaid and owing to Mr. Y and Mr. Z or such survivor after bringing into account the sums (if any) previously paid by the Company and/or the Surety under and pursuant to sub-clause (i) of this clause.

3. And it is hereby agreed and declared as follows :—

(i) That notwithstanding that as between the Surety and the Company the Surety is only surety for the Company yet as between the Surety on the one hand and Mr. Y and Mr. Z and the survivor of them on the other hand the Surety shall be treated as a principal debtor for the whole of the said sum or debt of £G referred to in clauses 1 and 2 hereof and the Surety shall not be released by Mr. Y and Mr. Z or either of them giving time to the Company or by any other modification of the provisions of clause 2 hereof or other act or omission of the Company or Mr. Y and Mr. Z or either of them whereby independently or in the absence of this present provision the Surety would or might have been so released

(ii) That as between the several parties hereto and for all purposes whatsoever the said sums of £A and £B shall be deemed to have been ascertained and found owing by the Company to Mr. Y and Mr. Z

respectively as on accounts stated and that in any action or proceedings each or any one of the parties hereto shall be entitled to plead or claim accordingly.

4. Mr. Y and Mr. Z hereby mutually agree and declare that although as between the Company and the Surety on the one hand and themselves on the other hand the hereinbefore mentioned debt or sum of £G is to be deemed to be owing and to belong to them as on a joint account yet as between themselves and their respective executors administrators and assigns such debt or sum of £G shall be deemed to remain owing and to be payable to them in equal shares and so that henceforth all moneys paid by either the Company or the Surety under and pursuant to the covenants contained in clause 2 of this deed shall be held by them or the survivor of them as to one moiety thereof in trust for Mr. Y his executors administrators and assigns and as to the other moiety thereof in trust for Mr. Z his executors administrators and assigns.

In witness *etc.*

Form 22.

Voluntary Conveyance of House and Land to Urban District Council for the Purposes of the Physical Training and Recreation Act, 1937 (*a*).

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Donor") of the one part and the Urban District Council of —— (hereinafter called "the Council") of the other part

Parties.

WHEREAS the Donor is the estate owner in respect of the fee simple of the property hereinafter described in possession free from incumbrances and is desirous of conveying the same to the Council for the purposes hereinafter mentioned

Recital of vendor's title and desire to convey.

NOW THIS DEED WITNESSETH and it is hereby agreed as follows:—

1. In consideration of the premises the Donor hereby grants and conveys unto the Council ALL THAT messuage or tenement yard garden and outbuildings and all those pieces or parcels of meadow or pasture land adjoining thereto and held therewith situate in the parish of —— in the county of —— and bounded *etc.* and containing by admeasurement *etc.* which premises are delineated on the plan annexed hereto and thereon coloured pink To HOLD UNTO the Council in fee simple but subject to the restrictions set out in the First Schedule hereto.

Conveyance to Council subject to restrictions in Schedule.

(*a*) This and the three following forms were drafted by Mr. E. H. Bodkin of Lincoln's Inn. The above Precedent appears to provide a simple way of dedicating land to the promotion of the Youth Movement and similar purposes. The necessity of an elaborate trust deed and the expense of the periodical appointment of new trustees is avoided. The conveyance, it is submitted, does not create a charity within the Charitable Trusts Acts, and in any case the powers of the Council to deal with the land, being statutory, would be exercisable without the consent of the Charity Commissioners. On the other hand, the restriction as to user for the purposes of the Act will only be enforceable by the donor personally, and the Council would have power at any time to sell the land with the consent of the Minister of Health under s. 165 of the Local Government Act, 1933. If the donor is not himself a member of the local Youth Movement Committee and desires to retain some measure of control over the management of the property and the purposes for which it is to be used, the next Precedent should be used.

The conveyance, being voluntary, must within six months be sent to the Charity Commissioners to be recorded; but it need not in order to be valid be executed twelve months before the death of the donor: see Mortmain and Charitable Uses Act, 1888, Part III; Mortmain and Charitable Uses Act Amendment Act, 1892; Settled Land Act, 1925, s. 29 (4). The Recreation Grounds Act, 1859, appears not to apply. Estate duty would, of course, be payable on the donor's death if he died within three years. The stamp should be adjudicated. An instrument of transfer of registered land may be made in the above form *mutatis mutandis*.

Under the combined operation of s. 268 of the Local Government Act, 1933, and s. 4 of the Physical Training and Recreation Act, 1937, a local authority may accept a voluntary conveyance of land for the purposes of the latter Act. These purposes are very wide; the authority may acquire, lay out and provide with suitable buildings and otherwise equip and maintain lands for the purposes of gymnasiums, playing fields, holiday camps or camping sites, or for the purpose of centres for the use of clubs, etc., having athletic, social or educational objects.

It may either manage the lands itself, or let them at a nominal or other rent, and may provide wardens, teachers and leaders for securing that effective use is made of the facilities offered. The premises may also be used or let for the purpose of concerts, entertainments and meetings. The National Council for England and Wales is to establish local committees representing local educational and other authorities and voluntary organisations to review existing facilities for physical training and to encourage and consider local facilities and proposals, and on their recommendation the Board of Education may make grants for the purposes of the Act.

Agreement to use property for the purposes of the Act.

2. It is hereby agreed and declared that the Council shall hold the property hereby assured for the purposes defined by sub-sections one and two of section four of the Physical Training and Recreation Act 1937 or some or one of them.

Acknowledgment of right to production of documents.

3. The Donor hereby acknowledges the right of the Council to the production of the documents mentioned in the Second Schedule hereto and to delivery of copies thereof.

Certificate as to value.

4. It is hereby declared and certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the value or aggregate value of the property conveyed or transferred exceeds the sum of £500.

IN WITNESS *etc.*

THE FIRST SCHEDULE ABOVE REFERRED TO.

The property shall not be used for any purpose whatsoever except physical training and recreation (*b*).

THE SECOND SCHEDULE ABOVE REFERRED TO.

[*This will contain particulars of the documents retained by the Donor.*]

Form 23.

Voluntary Conveyance of House and Land to Trustees for Promoting Physical Training, Recreation and Otherwise for the Purposes of the Youth Movement (*a*).

Parties.

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Settlor") of the one part and the Settlor and B of *etc.* and C of *etc.* (hereinafter collectively referred to as "the Trustees") of the other part

Recital of settlor's title and desire to create trust.

WHEREAS the Settlor is the estate owner in respect of the fee simple of the property hereinafter described in possession free from incumbrances and is desirous of conveying the same to the Trustees to be held by them Upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same

NOW THIS DEED WITNESSETH and it is hereby agreed and declared as follows:—

Conveyance to trustees.

1. In consideration of the premises the Settlor hereby grants and conveys unto the Trustees ALL THAT *etc.* [*Parcels as in last Precedent*]

(*b*) This restriction is binding on the Council and is not *ultra vires*. See *Stourcliffe Estates Co.* v. *Bournemouth Corporation*, [1910] 2 Ch. 12.

Other restrictive covenants may be added if desired, provided they are not inconsistent with the purposes of the Physical Training and Recreation Act (see *ib.*).

(*a*) See notes to last Precedent. Under Part II of the Mortmain and Charitable Uses Act, 1888, the conveyance will be void if the donor dies within a year. He should, therefore, execute a confirmatory codicil: see Precedent 22. The conveyance must be sent to the Charity Commissioners to be recorded under s. 29 (4) of the Settled Land Act, 1925. The consent of the Charity Commissioners will be necessary under the Charitable Trusts Act, 1885, s. 29, to any sale, mortgage or charge, or lease exceeding twenty-one years or otherwise falling within that section. Consequently there is no object in declaring the trusts by a separate deed.

TO HOLD unto the Trustees in fee simple upon the trusts and with and subject to the powers and provisions hereinafter declared and contained that is to say:—

Trust for purposes of physical training, etc.

(a) The Trustees shall stand possessed of the property hereby assured UPON TRUST to permit the same or any part thereof or any buildings or erections now thereon or which may be built or erected thereon under the power for that purpose hereinafter contained to be used and enjoyed either by the public or by any class or body of persons as and for playing fields sports or recreation grounds gymnasiums swimming baths hostels holiday camps camping sites or for any other athletic recreational or educational purpose which the Trustees think fit for the time being or which may be recommended by the committee or sub-committee for the district in which the said property is situate of the National Advisory Council for England and Wales appointed under the Physical Training and Recreation Act 1937 or any statutory modification or re-enactment thereof for the time being in force

(b) In particular the Trustees may permit a club society or organisation having for its objects the promotion of any of the purposes aforesaid (including a committee or sub-committee of the said National Advisory Council) to have the exclusive use of the said property or any part thereof for such purposes and during such period or periods and subject to such conditions as they may think fit or may let the same to such club society or organisation at such rent and subject to such conditions as they may deem necessary.

Power to lay out and erect buildings.

2. The Trustees may lay out the said property hereby assured or any part thereof for the purposes aforesaid and may pull down adapt or reconstruct any buildings or erections now thereon and erect construct and equip gymnasiums dressing rooms pavilions swimming baths or pools hostels lecture or concert halls reading rooms stands refreshment rooms and other buildings and erections which they may deem necessary or suitable for such purposes.

Extension of statutory powers.

3. The Trustees shall by way of extension of the powers conferred on them by statute have in relation to the property hereby assured the following powers namely:—

(1) To let the same or any part thereof at a rent less than the best rent obtainable or at a nominal rent

(2) To raise by mortgage or charge any moneys required for any of the purposes hereby authorised

(3) On a sale to impose such conditions and restrictions as to user and otherwise and (if they shall think fit) such provisions for securing that the said property shall continue to be used for similar purposes to those hereby authorised as they may deem expedient

Power to appoint managers, charge fees and make rules.

(4) To purchase take on lease or otherwise acquire any land or premises (whether freehold or leasehold for any term) easements rights or privileges which may be conveniently used or enjoyed with the property hereby assured or which they may consider suitable for the purposes hereby authorised.

4. The Trustees may (a) appoint such supervisors managers wardens

instructors groundsmen and other persons at such salary or remuneration as they shall think fit (b) charge entrance or other fees or subscriptions for the use of the said property or the accommodation and facilities provided thereon (c) make rules for the regulation of the said property and the conduct of the persons using or having access thereto.

Power to receive grants and donations.

5. The Trustees may receive grants donations and subscriptions for or towards any of the purposes hereby authorised (*b*).

6.—(a) The Trustees shall so far as possible (but so that this clause shall not create any binding obligation on them) apply any moneys received by them hereunder (whether in the nature of capital or income) in the first place in defraying the expenses of the management maintenance repair and insurance of the property hereby assured and any buildings or erections for the time being thereon and in the discharge of any other outgoings in respect thereof including the interest on any mortgages or charges thereon in the next place in paying off any such mortgages or charges and subject thereto in paying the costs of and incidental to the exercise of any of their powers hereunder

(b) The Trustees may invest any moneys not in their opinion immediately required for any of the purposes aforesaid in any investments authorised by law for the investment of trust funds with power to vary such investments but so that they shall have power at any time to sell such investments and apply the net proceeds as income for the purposes aforesaid.

Power to appoint new trustees.

7. The Settlor shall during his life have power to appoint new trustees hereof.

Certificate as to value.

8. [*See clause* 4 *of last Precedent.*]

IN WITNESS *etc.*

(*b*) If the trustees are to manage the property themselves, it will probably be necessary for the settlor to provide a money endowment. The trustees might apply for a grant from the Board of Education; but it appears doubtful whether they would constitute a "voluntary organisation" within s. 9 of the Physical Training and Recreation Act, 1937.

Form 24.

Instrument of Transfer of Registered Land for the Same Purposes as the Dying within a Year (*b*).

LAND REGISTRY.

Land Registration Act 1925.
District ——
Title No. ——
Property ——

[*Date*] I, A of *etc.* hereby transfer to myself, B of *etc.* and C of *etc.* the land comprised in the title above referred to for the charitable purposes and subject to the powers and provisions mentioned in the Schedule hereto

AND I apply for the entry of the following restriction:—

No disposition or other dealing is to be registered without the consent of the Charity Commissioners or an order of the Registrar.

[*Add certificate as to value, if required.*]

THE SCHEDULE ABOVE REFERRED TO.

[*This will contain clauses* 1–8 *of last Precedent.*]

Signed *etc.*

Form 25.

Codicil Confirming Deed of Gift in Precedent 23 in the Event of the Donor Dying within a Year (*b*).

I, A of *etc.* hereby declare this to be a codicil which I make this —— day of —— 19— to my Will which bears date the —— day of —— 19—

1. Whereas by a conveyance dated the —— day of —— 19— and made between myself of the one part and myself and B and C of the other part I conveyed certain freehold property to myself and the said B and C in fee simple upon the charitable trusts and with and subject to the powers and provisions therein declared and contained Now I hereby devise the said property in the event of my death within twelve months after the execution of the said conveyance to the said B and C or such of them as shall be living at the date of my death in fee simple upon the trusts and with and subject to the powers and provisions in such conveyance declared and contained.

2. I direct that any death duties which by reason of my death may become payable in respect of the said property and the interest payable on such duties shall be paid by my Trustees out of my residuary estate.

3. In all other respects I ratify and confirm my said Will.

IN WITNESS *etc.*

(*a*) See Land Registration Rules, 1925, rr. 60, 122.
The transfer need not be sent to the Charity Commissioners: Settled Land Act, 1925, s. 29 (4).

(*b*) Under s. 5 of the Mortmain and Charitable Uses Act, 1891, the land will have to be sold within a year unless the Charity Commissioners or the Court are satisfied that it is required for actual occupation, which presumably would be the case.

Form 26.

Agreement for Sale of Leasehold Unlicensed Hotel or Boarding-house, the Purchase Money to be Payable by Instalments. Special Provisions as to War Damage to Premises and Furniture.

Parties.

AN AGREEMENT made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called the Vendor) of the one part and B of *etc.* (hereinafter called the Purchaser) of the other part.

Agreement for sale.

1. The Vendor shall sell and the Purchaser shall purchase for the sum of £—— and upon the terms and subject as hereinafter mentioned

(i) ALL THAT leasehold messuage or tenement situate at —— in the county of —— and known as —— with the appurtenances as the same is held for the residue of a term of —— years from the —— day of —— granted by a lease dated *etc.* at the yearly rent of £—— and subject to the lessee's covenants and conditions in the said lease contained AND ALSO the tenant's fixtures in or upon the said premises

(ii) The goodwill of the business of a private hotel or boarding-house now carried on by the Vendor on the said leasehold premises including the benefit of all pending contracts and engagements

(iii) The furniture and other chattels transferable by delivery owned by the Vendor which are in or upon the said leasehold premises and in use in connection with the said business at the date hereof (*a*).

Purchaser to assume debts and liabilities.

2. The debts owing by and other liabilities of the Vendor in connection with the said business as at the date (hereinafter called the date of possession) when the Purchaser shall be let into possession of the property hereby agreed to be sold shall be allowed in reduction of the said purchase money and the Purchaser shall take upon himself and indemnify the Vendor against the same and the assurance to the Purchaser shall contain a proper covenant by him to indemnify the Vendor against the same accordingly.

Apportionment of purchase money.

3. The said purchase money shall be apportioned for the purposes of stamp duty between the property hereby agreed to be sold as follows namely £—— shall be the price of the said leasehold premises tenants' fixtures and goodwill £—— shall be the price for the said book debts and £—— the price of the said furniture and other chattels transferable by delivery.

Payment of purchase money and provisions on default.

4. (i) The sum of £—— part of the said purchase money having been already paid by the Purchaser to Messrs. —— the Vendor's solicitors as stakeholders the balance thereof (after deducting such deposit and also the amount of the said debts and liabilities when ascertained) shall be paid with interest thereon or on the unpaid part thereof at the rate of £—— per cent. per annum from the —— day of —— next by equal half-yearly instalments of principal amounting to £—— each payable on the —— day of —— and the —— day of —— in each year

(*a*) This form was drafted by Mr. E. H. Bodkin of Lincoln's Inn. It may be more satisfactory if the business is large to arrange for the fixtures, chattels and book debts to be valued.

the first instalment to be paid on the —— day of —— with the addition to each instalment of the interest on the portion of the purchase money remaining unpaid

(ii) If the Purchaser shall make default in payment of any of such instalments of principal or interest or any part thereof for thirty days after the same shall have become due or there shall be any breach by him of his obligation to observe and perform the covenants and conditions in the said lease hereunder then and in such event the whole of the unpaid instalments of the said purchase money with the interest thereon shall become immediately due and payable (but interest shall nevertheless be payable on so much of the said purchase money as shall remain unpaid at the rate aforesaid up to the actual date of payment thereof) and the Vendor may on such default by notice in writing determine this agreement and resume possession of the said property hereby agreed to be sold and thereupon the provisions as to value payments policies of insurance and insurance money contained in clause 17 of this agreement shall apply but the Vendor shall not be under any obligation to repay or account for the said deposit or any other sums or costs paid or expended by the Purchaser under or in pursuance of this agreement

(iii) If the Purchaser shall give —— days' notice to the Vendor of his intention in that behalf and there shall not have been any breach by him of any of his obligations under this agreement he shall be entitled on any of the half-yearly days hereinbefore appointed for payment (provided he also pays the interest payable on such half-yearly day) to pay off the whole balance of the said purchase money then unpaid.

Purchaser t
be let into
possession;
war damag
contribution
and other ou
goings to be
apportioned.

5. (i) The Purchaser shall upon his accepting the Vendor's title to the said leasehold premises be let into possession of the said property hereby agreed to be sold and as from the date of possession he shall observe and perform all the covenants and conditions in the lease contained and on the part of the lessee to be observed and performed and shall discharge all outgoings in respect of the said property (including any rates made before but not demanded until after that date) and all costs and expenses of and incidental to the carrying on of the said business and the profits of the said business shall belong to the Purchaser and the outgoings shall if necessary be apportioned for this purpose.

(ii) All premiums payable in respect of policies hereby agreed to be effected and maintained by the Purchaser and all instalments of contribution in respect of the said leasehold premises which shall become payable under the War Damage Acts 1941 and 1942 after the date of possession shall (after deducting therefrom any statutory indemnity to be given in respect thereof to the benefit of which indemnity (to be apportioned if necessary) the Purchaser shall be entitled as from the date of possession) be deemed for the purposes of this Agreement to be outgoings and for the purpose of finally adjusting the accounts between the Vendor and Purchaser on completion the last instalment and indemnity which fall to be so apportioned in respect of the period up to the date of com-

pletion shall (unless the Treasury shall prior to such date have fixed a different amount in which case such last mentioned amount shall be substituted) be deemed to be of the same amount as the last instalment and indemnity which shall become due and payable prior to the date of completion (*b*)

(iii) The Purchaser shall from the date of possession carry on the said business in the manner in which the same has been carried on by the Vendor and under and in accordance with the Vendor's directions in all respects.

Purchaser to insure against fire and war damage.

6. The Purchaser shall as from the date of possession

(i) Keep the said furniture and chattels in a good and perfect state of repair and condition in every respect and also replace such of the same as may be broken destroyed or damaged by whatsoever means (including war damage as defined by the War Damage Acts 1941 and 1942) with other articles of equal value and not remove the same or any part thereof from the said leasehold premises nor lend or part with the possession of the same (either directly or indirectly) to any person or persons whomsoever

(ii) Insure and keep insured the said furniture and chattels against loss or damage by fire to their full value in the —— Insurance Office or in some other office of repute to be approved by the Vendor

(iii) Effect and maintain an insurance in respect of his interest in the said furniture and chattels and tenant's fixtures under this agreement under the business scheme operated by the Board of Trade under the War Damage Acts 1941 and 1942 in the full value thereof and give all such undertakings and supply such information and otherwise as may be required in order to obtain payment of the insurance money (*c*)

(iv) On demand produce to the Vendor the policies of insurance hereby agreed to be effected or maintained by the Purchaser or any of them and the receipts for the last premium in respect thereof and lay out the insurance money received under any such policy or any other policy which may be effected by the Purchaser in repairing or replacing the property insured thereunder respectively.

Production of lease.

7. The lease under which the said leasehold premises are held or a

(*b*) Apart from this provision there would be no apportionment of the instalments, even though the purchase money is payable by instalments. See *Re Watford Corporation and Ware's Contract* [1943] W. N. 17.

(*c*) There is no provision in the War Damage Act, 1941, in regard to the business scheme corresponding to s. 46 (3) which provides that where a hereditament sustains war damage pending completion of a contract for sale a value payment shall (unless the contract is rescinded) be held on trust for the purchaser. An assignment of the right to payment under the business scheme is, under s. 59 (5), void unless the consent of the Board of Trade is obtained, and it is conceived that consent might be refused to a declaration of trust in the purchaser's favour; and in the absence of such consent the Board of Trade would strictly under the doctrine of *Castellain* v. *Preston* (11 Q. B. D. 380) be entitled, if payment were made under the policy, to be repaid out of the purchase money. The best course, therefore, seems to be to require the purchaser to take out a policy in respect of his interest under the business scheme and to provide for the money to be applied in replacement. It is assumed in this form that the lease makes satisfactory provision for insurance of the premises against fire and that the insurance company will consent to this policy being held in trust for the purchaser pending completion in accordance with s. 47 of the Law of Property Act, 1925.

copy thereof having been already produced to the Purchaser's solicitors the Purchaser shall be deemed to purchase with full knowledge of the contents thereof whether of a usual character or not and of the state of the said premises as to repairs insurance party walls and all other matters and shall take the said premises as they are.

Delivery of abstract.

8. The Vendor shall (if required) within fourteen days from the date hereof deliver or send by post to the Purchaser or his solicitor an abstract of his title to the said leasehold premises commencing with the said lease.

Identity.

9. The Purchaser shall admit the identity of the leasehold property purchased with that comprised in the muniments upon the evidence afforded by a comparison of the descriptions in the muniments and plans thereto (if any) and a statutory declaration to be made if required at the Purchaser's expense that the said premises have been enjoyed according to the title shown from the date of the said lease.

Evidence of performance of covenants

10. The receipt for the last rent accrued due previously to the date of possession in respect of the said leasehold premises shall be accepted as conclusive evidence of the performance and observance of all the covenants and conditions in the said lease or of the effectual waiver of any breach (whether continuing or not) of any covenant or condition up to the said date without proof being required of the title or authority of the person giving such receipt.

Licence to assign.

11. A licence from the lessor to assign the said lease being necessary the Vendor will endeavour to obtain such licence at his own expense but if he shall be unable to procure the same the contract shall become void and thereupon the provisions as to value payments and policies of insurance and insurance money in clause 17 hereof shall apply but the deposit shall be returned to the Purchaser who shall not however be entitled to any interest thereon or to be repaid any sums or costs paid or expended by him under or in pursuance of this agreement.

If a licence is procured the Purchaser shall not inquire into the title of the person by whom the same may purport to be signed nor make any objection or requisition respecting the sufficiency or form of such licence.

Assurance.

12. Upon payment of the whole of the purchase money and interest as hereinbefore provided the Purchaser shall be entitled to a proper assurance of the said leasehold premises and goodwill from the Vendor and all other necessary parties (if any) such assurance to be prepared by and at the expense of the Purchaser and the draft thereof shall be left not less than ten days and the engrossment thereof not less than ten days before payment of the final instalment of the purchase money at the office of the Vendor's solicitor for perusal and examination by the Vendor and other conveying parties (if any) (*d*).

Purchaser to covenant to perform covenants in lease and indemnify Vendor.

13. The Purchaser shall in the assurance expressly or impliedly covenant to pay perform and observe and to indemnify the Vendor against the rents and covenants of the said lease under which the said leasehold

(*d*) The conveyance may if desired contain a covenant by the vendor not to set up a rival business.

premises are held and shall for that purpose if required either execute and deliver to the Vendor a duplicate of the assurance to be prepared and stamped by and at the expense of the Purchaser or give to the Vendor a separate statutory acknowledgment of the Vendor's right to the production and delivery of copies of the said assurance and an undertaking for the safe custody thereof (*e*).

Requisitions.

14. Within fourteen days after the delivery of the abstract the Purchaser shall furnish to the Vendor's solicitors a statement in writing of his objections and requisitions (if any) arising on the abstract or this agreement and within seven days after the delivery of the Vendor's replies thereto the Purchaser shall furnish to the Vendor's solicitors a statement in writing of his further objections or requisitions (if any) arising on such replies and every objection or requisition not so stated shall be deemed to be waived. For the purpose of this condition an abstract shall be deemed perfect if it supplies the information suggesting the objection or requisition although otherwise defective. If no objection or requisition is so stated the title shall be considered as accepted and in these respects time shall be deemed of the essence of the contract.

Identity.

15. The property is believed and shall be taken to be correctly described as to quantity and otherwise and is sold subject to all chief quit and other rents and outgoings and to all incidents of tenure rights of way and other rights and easements (if any) affecting the same and if any error misstatement or omission shall be discovered in this agreement the same shall not annul the sale nor shall any compensation be allowed by the Vendor in respect thereof (*f*).

Rescission clause.

16. If the Purchaser shall make and insist on any objection or requisition either as to title conveyance or any matter appearing on this agreement or abstract or otherwise (not being necessary for the enforcement of any right under either section 42 or 125 of the Law of Property Act 1925) which the Vendor shall be unable or on the ground of difficulty delay or expense or on any other reasonable ground unwilling to remove or comply with the Vendor shall (notwithstanding any previous negotiation or litigation) be at liberty on giving to the Purchaser not less than ten days' notice in writing to rescind this agreement in which case (unless the objection or requisition shall have been in the meantime withdrawn) this agreement shall at the expiration of the notice be rescinded the Purchaser being in that event entitled to a return of the deposit but without interest costs or compensation.

Discharge of contract in event of war damage occurring.

17. (i) If prior to the date of completion the said leasehold premises shall suffer war damage as defined by the War Damage Acts 1941 and 1942 to such an extent as to render the same unfit within the meaning of section 24 of the Landlord and Tenant (War Damage) Act 1939 or the said furniture and other chattels shall suffer war damage as so defined so that the aggregate value thereof shall be reduced by one-half

(*e*) A charge upon the lease in aid of the indemnity may sometimes be desirable.
(*f*) It is assumed that the usual preliminary inquiries will have been made as to land charges, etc.

or more then and in either of such events this agreement shall become void and the following provisions shall have effect, that is to say (1) Any value payment made or to be made under the War Damage Acts 1941 and 1942 to the Vendor in respect of the said leasehold premises shall be retained by him for his own benefit and all policies of insurance effected or kept up by the Purchaser in accordance with the terms of this agreement and all money received thereunder respectively shall be held in trust for the Vendor (2) All such outgoings as are hereinbefore required to be apportioned and the profits of the said business shall be apportioned as at the date when such damage occurs and the balance paid by the Purchaser to the Vendor or by the Vendor to the Purchaser as the case may be (3) The said deposit shall be returned to the Purchaser but without interest (4) All instalments of the said purchase money and interest thereon already paid shall be repaid by the Vendor to the Purchaser but without interest (5) The Vendor shall repay to the Purchaser his costs of investigating the title

(ii) Any question which may arise as to whether the said leasehold premises or furniture and other chattels have suffered war damage to the extent aforesaid shall in default of agreement between the parties hereto be referred to the arbitration of two indifferent persons one to be appointed by each party to the reference or their umpire And this shall be deemed to be a submission to arbitration within the Arbitration Acts 1889—1934 (*g*).

Purchaser not to assign without consent.

18. The Purchaser shall not assign his interest under this agreement without the written consent of the Vendor.

Definition clause.

19. References in this agreement to any statute shall where the context so admits include any statutory modification or re-enactment thereof for the time being in force and the expression "Business Scheme" shall include any scheme for the time being in operation by or on behalf of the Government for the insurance of chattels or fixtures of the nature of those hereby agreed to be sold.

As witness *etc.*

(*g*) The contract would probably not be frustrated even in the case of total destruction of the subject-matter. The above clause is intended to effect an equitable adjustment of the rights of the parties, which frustration does not do, even since the decision of the House of Lords in *Fibrosa Société Anonyme* v. *Fairbairn Barbour, Ltd.* [1942] 2 All E. R. 122.

Form 27.

Grant of Right to Lay Water Pipes by Two Adjoining Owners to Third Owner (*a*).

THIS DEED OF GRANT is made the —— day of —— 19— BETWEEN —— of *etc.* (hereinafter called "the First Grantor") of the first part —— of *etc.* (hereinafter called "the Second Grantor") of the second part and —— of *etc.* (hereinafter called "the Grantee") of the third part

Recitals: of seisin;

WHEREAS :—

(1) The First Grantor is seised in unincumbered fee simple in possession of the piece of land situate at —— in the county of —— shown and edged pink on the plan attached hereto

(2) The Second Grantor is seised in unincumbered fee simple in possession of the piece of land at —— aforesaid shown and edged green on the said plan

(3) The Grantee is seised in unincumbered fee simple in possession of the land and premises known as —— aforesaid shown and edged yellow on the said plan

of desire to lay pipes.

(4) The Grantee is desirous of laying and maintaining a water main or pipe for the supply of water to his premises known as —— aforesaid between the points marked A and B on the said plan and the First Grantor and the Second Grantor have agreed to grant to the Grantee such rights and liberties as are hereinafter mentioned

NOW THIS DEED WITNESSETH as follows :—

Grant.

1. IN pursuance of the said agreement and in consideration of the covenants on the part of the Grantee hereinafter contained the First Grantor and the Second Grantor each according to his or her respective estate and interest as aforesaid as beneficial owner hereby respectively grant unto the Grantee FULL AND FREE RIGHT AND LIBERTY at all times hereafter of laying water mains or pipes (not exceeding — inches in bore (*b*) for carrying and conducting water (with such valves manholes and surface boxes as may be necessary) in or under the pieces of land edged pink and green on the said plan and in the position shown by the dotted mauve line on the said plan together with full right and liberty of entering upon the said pieces of land from time to time and at all times hereafter for the purpose of inspecting maintaining cleansing repairing renewing and enlarging such mains pipes valves manholes and surface boxes TO HOLD the same unto the Grantee in fee simple.

Not to diminish flow of water.

2. THE First Grantor and the Second Grantor hereby covenant with the Grantee for and with intent to bind so far as may be himself or

(*a*) Stamp *ad valorem* duty as on a conveyance on sale calculated on twenty times each annual payment. Therefore if the annual payments are as mentioned in this form the stamp is 2s. (see s. 56 (2) of the Stamp Act, 1891). If a premium is payable the deed is chargeable with *ad valorem* duty on the amount of the premium plus twenty times the annual payments (*Martin* v. *I. R. C.* (1904), 91 L. T. 453). If the £500 certificate is inserted, the stamp duty is halved.

(*b*) This is the inside diameter of the pipe.

herself and their successors in title that they will not at any time hereafter do or permit to be done upon either of the said pieces of land respectively coloured pink and green upon the said plan any act or thing which may in any way diminish interfere with or damage the purity or flow of water coming through or carried by the said main or pipes.

As to covenants for bills.

3. ALTHOUGH this transaction is not a purchase, the same covenants for title and otherwise shall be deemed to be incorporated as if the Grantee were a purchaser from the First Grantor and the Second Grantor respectively for valuable consideration of the rights hereby granted (*c*).

Mutual covenants.

4. THE Grantee hereby covenants with the First Grantor and the Second Grantor and with each of them and also with his or her or their successors in title that his executors or administrators will

(a) pay to each of them the owner or owners for the time being of the pieces of land edged pink and green on the said plan so long as he or they shall continue to exercise the rights hereby granted the yearly sum of one shilling if demanded such respective sums to be paid in advance on the —— of —— in every year

(b) make good any damage caused to either of the said pieces of land edged pink and green on the said plan in connection with the exercise by the Grantee of any of his rights hereby granted

(c) keep the First Grantor and the Second Grantor and their respective estates indemnified against any loss or damage caused by any leakage of water from the said mains or pipes provided such loss or damage is not due to the act neglect or default of the First Grantor and the Second Grantor or his or her agents or servants and provided also that notice in writing of any claim under this clause is given to the Grantee within one calendar month of the occurrence of any such loss or damage.

5. THE said mains and pipes shall be and remain the property of the Grantee and be removable at any time accordingly.

Right to production of deeds.

6. THE First Grantor and the Second Grantor hereby respectively acknowledge the right of the Grantee to production of the conveyances or other documents vesting the pieces of the land edged pink and green respectively in the First Grantor and the Second Grantor respectively and to delivery of copies thereof and respectively undertake for the safe custody of the said respective documents relating to the pink and green land respectively.

7. A memorandum of this Deed of Grant shall be endorsed on the assurances to the First Grantor and the Second Grantor of their respective lands.

8. [*Statement as to value, if required.*]

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first before written.

[*Signature and seals of all parties.*]

(*c*) It should be remembered that no covenants for title will be implied by virtue of the use of the words "Beneficial Owner" as it appears that the covenants are only implied in the case of a conveyance *for valuable consideration* or in the other cases mentioned in s. 76 of the Law of Property Act, 1925, none of which apply here. This is a point that is sometimes overlooked in drafting.

Form 28.

Deed of Covenant by a Tenant for Life of Settled Residue with One of the Executors of the Will Covenanting to Pay Him an Annuity in Consideration of His Accepting the Trusteeship, the Executor Covenanting to Act in the Trusts (*a*).

Parties. THIS DEED OF COVENANT made the —— day of —— BETWEEN A of *etc.* widow (hereinafter called the "Tenant for Life") of the one part and B of *etc.* (hereinafter called "the Trustee") of the other part

Recitals: WHEREAS:—

will; (1) X (hereinafter called "the Testator") by his will dated the —— day of —— 19— after appointing the Trustee and C to be executors and trustees and bequeathing free of duty to each of his said executors and trustees the sum of £50 thereby devised and bequeathed his residuary real and personal estate to his said trustees upon certain trusts for the benefit of the Tenant for Life during her life and after her death upon trust for his issue as therein mentioned

death of testator; (2) The Testator died on the —— day of —— 19— and his said will was duly proved by the Trustee and the said C in the Principal Probate Registry of the High Court of Justice on the —— day of —— 19—

difficulties of administration; (3) The winding up of the estate of the Testator has proved difficult and complicated and has involved the executors especially the Trustee in great loss of time and it appears that the future management of the estate will also involve the trustees in further loss of time

(4) The Trustee not being a professional person and therefore not being able to charge for business transacted time expended and acts done by him as permitted by clause 12 of the Testator's will is unwilling to accept the trusteeship thereof unless proper provision for his payment as such trustee is made

agreement to remunerate trustee. (5) The Tenant for Life being desirous that the Trustee should act as a trustee of the said will of the Testator and as an acknowledgment to him for his past work in the administration of the said estate and in consideration of the covenant hereinafter contained has agreed to provide for the remuneration of the Trustee in manner hereinafter appearing

(6) In consideration of such covenant the Trustee has agreed to accept the trusteeship of the testator's said will and to continue to help the Tenant for Life in her business affairs as heretofore

Now in consideration of such agreement and of the premises THIS DEED WITNESSETH as follows:—

Covenant to pay annuity. 1. During the joint lives of the Tenant for Life and the Trustee or until the Trustee shall cease to be a trustee of the will of the Testator whichever event shall first happen the Tenant for Life hereby covenants

(*a*) Stamp, 2s. 6d. for every £5 or fractional part of £5 of the sum payable as the covenant is for joint lives. A covenant in this form will enable the tenant for life to deduct the annuity for income and surtax purposes. This deed is intended to meet the difficulty, which frequently arises in the administration of a large estate, of providing for some remuneration for the trustee who undertakes the work involved where the testator or settlor has not done so.

with the Trustee that she will pay to the Trustee an annuity of £—— per annum by way of payment for his past services and for the continuation of such services as aforesaid.

2. Such annuity shall be deemed to accrue from day to day and to be payable by equal quarterly payments on the usual quarter days the first payment namely the sum of £—— which shall be deemed to have begun to accrue on the —— day of —— and shall be payable on the —— day of —— next.

3. The Trustee hereby covenants with the Tenant for Life that he will accept the trusteeship of the will of the Testator and will duly and properly administer and carry out to the best of his ability the trusts in the said will contained and declared and that he will in all respects further the interests of the Tenant for Life her children and issue and give them the benefit of his advice and assistance if so requested by the Tenant for Life or her children or issue. Covenant to act as trustee.

IN WITNESS *etc.*

Form 29.

Appointment of New Trustees of a Settlement Including Land Held upon Trust for Persons in Undivided Shares and on Appointment of the New Trustees to be Trustees of the Statutory Trusts Affecting the Land (*a*).

THIS DEED OF APPOINTMENT made the —— day of —— BETWEEN A of *etc.* (hereinafter called "the Appointor") of the first part B of *etc.* (hereinafter called "the Surviving Trustee") of the second part and C of *etc.* and D of *etc.* (hereinafter called the "New Trustees") of the third part Parties.

WHEREAS:—

(1) This deed is supplemental to an indenture of settlement (hereinafter called "the Settlement") dated the —— day of —— 19— and made between the Appointor of the first part E of the second part and X and Y and the Surviving Trustee (hereinafter collectively referred to as the "Original Trustees") of the third part WHEREBY (i) the freehold property known as the A Hall Estate in the county of —— was conveyed to the Original Trustees in fee simple subject to a mortgage since duly discharged and (ii) certain investments therein referred to were assigned to the Original Trustees upon trusts for certain persons therein named in undivided shares as therein mentioned, and by the same deed it was declared that the power of appointing a new trustee was vested in the Appointor during his life Recitals: settlement;

(*a*) Stamp £1. Where land was settled before January 1, 1926, on persons in undivided shares, whether under a will or settlement, so that it vested in the trustees of the will or settlement under the transitional provisions contained in the Law of Property Act, 1925, First Schedule, Part IV, upon the statutory trusts, it must be remembered that, when new trustees have to be appointed, a double appointment is required. There must be an appointment of trustees of the original will or settlement, such appointment being made by the person given power to appoint, and there must also be an appointment of new trustees of the statutory trusts, such appointment being made by the persons in whom the power to appoint is vested by the Trustee Act, 1925. The two appointments can be by separate deeds but it will frequently be found convenient to combine them in one deed as in this form.

sales of part of the real estate.

(2) Parts of the A Hall Estate have been sold and the proceeds of sale were duly invested in securities authorised by the settlement and divers changes in the investments and other dealings with the trust funds comprised in or subject to the trusts of the settlement have from time to time taken place

state of the trust property;

(3) The property now subject to the trusts of the settlement consists of the unsold parts of the A Hall Estate mentioned in the First Schedule hereto and of the investments specified in the Second Schedule hereto

effect of the transitional provisions;

(4) By virtue of the transitional provisions of the Law of Property Act 1925 the entirety of the freehold property specified in the First Schedule hereto became vested at the commencement of the said Act in the said X and Y and the Surviving Trustee upon the statutory trusts for sale

death of trustees;

(5) The said X died on the —— day of —— 19— and the said Y died on the —— day of —— 19—

desire to appoint new trustees.

(6) The Appointor is desirous of appointing the New Trustees to be trustees of the settlement in the place of X and Y

(7) The Surviving Trustee is desirous of appointing the New Trustees to be trustees in the place of X and Y of the said freehold property for the purposes of the statutory trusts aforesaid

(8) It is intended that the said investments specified in the Second Schedule hereto shall be forthwith transferred into the joint names of the Surviving Trustee and the New Trustees

NOW THIS DEED WITNESSETH as follows:—

Appointment of new trustees of the settlement.

1. In exercise of the power for the purpose by the Settlement given to the Appointor and of every or any other power enabling him in this behalf he the Appointor hereby appoints the New Trustees to be Trustees in the place of X and Y and to act jointly with the Surviving Trustee for the purposes of the Settlement or such of the same purposes as are still subsisting and capable of taking effect.

Appointment of new trustees of the statutory trusts.

2. The Surviving Trustee in exercise of the power for this purpose conferred upon him by the statute in that behalf and of every or any other power him hereunto enabling hereby appoints the New Trustees to be trustees in the place of X and Y for the purposes of the statutory trusts aforesaid of the freehold property specified in the First Schedule hereto and of all other the property (if any) now held by the Surviving Trustee upon the said statutory trusts to act jointly with him the Surviving Trustee for all the purposes of the same statutory trusts.

IN WITNESS *etc.*

THE FIRST SCHEDULE.

[*To contain a short description of the unsold portions of the A Hall Estate.*]

THE SECOND SCHEDULE.

[*To contain a short description of the trust investments.*]

Form 30.

Form of Lease Granted by Way of Extension of Existing Lease. Special Provisions Carrying Over Liability for Accrued Dilapidations and Execution of Work to Remedy Same. Special Provisions as to Deposit of a Sum to Cover Cost of Dilapidation Work (*a*).

(*Prepared by Mr. A. L. Burford, Solicitor.*)

THIS LEASE made the —— day of —— 19— BETWEEN —— of *etc.* (hereinafter called "the Lessor" which expression where the context so admits or requires shall include the reversioner for the time being expectant upon the determination of the term hereby granted) of the one part and —— of *etc.* (hereinafter called "the Lessee" which expression where the context so admits or requires shall include his executors administrators and assigns) of the other part is SUPPLEMENTAL to a Lease (hereinafter called "the Lease") dated the —— day of —— 19— made between [the Lessor] of the first part and [the Lessee] of the other part whereby the premises therein more particularly described and shortly known as —— in the parish of —— in the county of —— were [together with the right of way therein mentioned] demised to [the Lessee] for a term of —— years from the —— day of —— 19— subject to the payment of the yearly rent of £—— and to the performance and observance of the covenants on the part of the Lessee and the conditions therein contained

Parties.

Particulars of lease which is to be extended

[WHEREAS the reversion immediately expectant upon the determination of the Lease is now vested in the Lessor]

[AND WHEREAS the residue of the term granted by the Lease is vested in the Lessee]

[AND] WHEREAS the Lessee has requested the Lessor to grant to him a Lease of the premises comprised in and demised by the Lease for the further term of years hereinafter mentioned on the terms hereinafter expressed which the Lessor has agreed to do

Recitals of title and request for further lease.

(*a*) This draft is intended to cover a case where the lessee under an existing lease applies for an extension of his lease. The present restrictions prohibiting the execution, without licence, of building and decorative works exceeding in cost £100 in any year, have a material bearing upon the position of the lessor as to accrued dilapidations. Special clauses covering the dilapidation position appear in this draft, and these envisage the deposit by the lessee of a sum of cash to cover, either wholly or in part, the cost of the accrued dilapidations. It cannot, of course, be too strongly emphasised that where liability in respect of accrued dilapidations is suspended indefinitely, the only safe practicable course for the landlord to adopt, is to stipulate for the estimated cost of the accrued dilapidations to be put up by the lessee. This should, however, be as security, so far as it extends, for the dilapidation works and not in satisfaction thereof, since the value of money and costs of labour and materials are likely to alter. The form will possibly require amendment to suit the facts of some cases, for example, where there has been an assignment of the original lease. In that case the lessor's remedies against the original lessee will need special consideration, and any precautions necessary to enforce, or preserve, the lessor's remedies against the original lessee will need to be carefully considered. The present draft was prepared to cover the case of an extension of an existing lease to the original lessee, but can, of course, be adapted to suit other cases.

NOW THIS DEED WITNESSETH as follows:—

Demise. 1. THE Lessor doth hereby demise and lease unto the Lessee ALL
Parcels. THAT (*b*) TO HOLD the said premises unto the Lessee from the —— day
Habendum. of —— 19— for the term of —— years thence next ensuing YIELDING AND PAYING therefor yearly unto the Lessor the yearly rent or sum of £—— (and so in proportion for any period less than a year) by equal quarterly payments on the usual quarter days in every year the first quarterly payments [to be deemed to have been made] [to be made] on the —— day of —— 19— and the said yearly rent to be paid and payable free and clear of and from all rates taxes charges impositions deductions duties and outgoings whatsoever imposed or to be imposed upon or in respect of the same premises or any part thereof or upon the said rent or payable by the Landlord lessee tenant or occupier in respect of the same respectively by Authority of Parliament or otherwise whatsoever during the term expressed to be hereby granted except landlord's property tax or income tax PROVIDED that during the period

Proviso substituting reduced war-time rent. from the said —— day of —— 19— until the termination of hostilities (as hereinafter defined) the Lessor shall accept in satisfaction of the said yearly rent or sum of £—— the yearly rent or sum of £—— (and so in proportion for any period less than a year) such last-mentioned yearly rent or sum so long as the same shall be payable to be paid by equal quarterly payments on the same usual quarter days upon which but for this proviso the said yearly rent or sum of £—— would become payable in accordance with the provision hereinbefore contained and also to be paid free and clear of all such taxes rates charges impositions deductions duties and outgoings as aforesaid (other than landlord's property tax).

Covenants, provisos and conditions by reference to lease to be extended (*c*). 2. EXCEPT as to the covenant for payment of rent this demise is subject to and with the benefit of such and the like covenants on the part of the Lessee and Lessor respectively and such of the like provisos and conditions in all respects (including the proviso for re-entry) as are contained in the Lease but without derogating from the generality of the foregoing it is for the purpose of removing doubt expressly hereby agreed and declared as follows:—

(a) Any reference in the Lease to "the term expressed to be hereby granted" and to "the said term" shall mean the term granted by these presents

(b) Any reference in the Lease to "the said yearly rent hereby reserved" and to "the said rent" shall mean the yearly rent or sum reserved by these presents

(c) The covenant by the Lessee in the Lease as to surrendering and giving up the demised premises at the expiration or sooner determination of the term shall for the purposes of these presents be read and construed as if the words "during the

(*b*) It is considered desirable for the property demised and also any rights granted to be described in full so as to focus and bring to light any alteration that may have been made since the original lease was granted.

(*c*) This clause only deals with standard expressions. The original lease should in each case be carefully considered to ascertain whether the meaning of any further expressions should be laid down in the further lease in order to make the provisions of the original lease suitably applicable.

term hereby granted " appeared in such covenant in substitution for any references to the term granted by the Lease

(d) The provision contained in the Lessee's covenants in the Lease rendering it lawful for the Lessor and others mentioned in such provision to enter into and upon the demised premises for the purpose of making a schedule of fixtures shall be read and construed as if the words " during the term hereby granted " appeared in such provision in substitution for any references to the term granted by the Lease.

3. The Lessee for himself and his assigns hereby covenants and agrees with the Lessor in manner following that is to say:— New lesse covenants

(a) That the Lessee and his assigns shall and will yearly and every year during the term hereby granted well and duly pay or cause to be paid unto the Lessor the said yearly rent or sum of £—— hereby reserved or so long as the same shall be payable pursuant to the provision hereinbefore contained the said yearly rent of £—— on or at the several days and times and in manner hereinbefore reserved according to the true intent of these presents to pay ren

(b) Subject and without prejudice nevertheless to the next sub-clause hereof that the Lessee will duly and punctually perform and observe all [his obligations] [the obligations of the Lessee] under the Lease and that if and so far as there shall be any breach or non-performance or non-observance of any of such obligations aforesaid the Lessor shall (notwithstanding the demise hereby granted) be entitled at such times and in such manner as he shall think fit to exercise all rights and remedies available to him And it is hereby expressly provided and the Lessee hereby covenants and agrees with the Lessor that there shall be available to the Lessor such and the like rights to re-enter upon the premises hereby demised and to proceed for and obtain a forfeiture of these presents as would be available to the Lessor if such breach or non-performance or non-observance as aforesaid had been a breach or non-performance or non-observance by the Lessee of his obligations under these presents to perforn all obliga tions und lease whi is to be extended;

(c) (i) The Lessee shall within the period hereinafter mentioned execute and complete in and about the demised premises in a proper and workmanlike manner to the satisfaction of the Lessor or his surveyors the works specified in the agreed Schedule of Dilapidations annexed hereto and also any further or additional work for which the Lessee shall meanwhile have become liable under these presents and shall pay the proper cost of the surveyors for the time being of the Lessor in relation to the supervision and approval of the said work And such works to execut works set in agreed Schedule Dilapida- tions (*d*).

(*d*) Where liability for accrued dilapidations is carried over, it is essential for an agreed schedule to be prepared showing the necessary works; without such a schedule, it would be impossible at a later stage to deal effectively with any argument or difference of view as to the nature or extent of the work.

shall be executed and completed in manner aforesaid within a period of [one] calendar [month] [months] (or such extended period as the Lessor or his surveyors on his behalf shall in writing agree) computed from the date upon which the restrictions now or for the time being imposed by any Government Department or other competent authority prohibiting the execution of such works shall be withdrawn or varied or modified in such manner as to render lawful the execution of such works as aforesaid

(ii) Notwithstanding the last paragraph of this present sub-clause if in the opinion of the Lessor or his surveyors for the time being the execution of any works set forth in the said Schedule is or has become necessary for the purpose of preserving the structure of the demised premises or any part thereof then the Lessee shall upon being required so to do in writing by the Lessor or such surveyors as aforesaid apply for and use his best endeavours to obtain any licences permits or other authorisations of such Government Department or Authority as aforesaid requisite for the lawful execution of such works and upon the same being granted the Lessee shall forthwith execute and complete in manner aforesaid such of the said works specified in such requirement or such of them for which such licence permit or other authorisation shall be granted

(iii) If the Lessee shall make default in performance of any of his obligations under either of the last two paragraphs of this present sub-clause for the period of [——] weeks from the date upon which such obligations fall due for performance then the Lessor may (without prejudice to any other remedy of the Lessor and in particular to the remedies exercisable by the Lessor pursuant to sub-clause (b) of this present clause) take such steps as he shall think fit for the due performance of such obligations including entry upon the demised premises and the execution of repairs and works and the expenditure in respect thereof including surveyors' fees for inspection report supervision and approval shall forthwith be recoverable as a debt due from the Lessee with interest thereon at five per centum per annum from the date of the expenditure thereof and any moneys so payable shall be recoverable out of the investment to be made as hereinafter mentioned (so far as the same shall extend)

rovisions as
deposit to
ver cost of
ilapidation
orks (*e*).

(iv) The Lessee shall upon the execution of these presents deposit

(*e*) An important practical point in connection with the deposit of money in joint names needs to be borne in mind. It is the normal practice of banks only to accept joint deposits upon terms that the survivor in the joint account can give valid instructions and a valid receipt. Experience has shown that at least the majority of "the big five" are especially reluctant to change this practice. Accordingly, where the lessor is an individual, and not a company, it becomes particularly important so to arrange the deposit that the lessee cannot, in the event of his surviving the lessor, negotiate the account in derogation of the intended arrangements. The same observations apply with equal force in the case of an investment. In view of this practical point, it may in some cases be found satisfactory for the joint deposit, or investment, to be made in the joint names of the lessor's and lessee's solicitors or surveyors.

with [——] the sum of [——] pounds and it is agreed by and between the parties hereto that such sum shall be held upon and subject to the following terms and conditions namely:—

I. The said sum shall be held as security for but not in satisfaction of the due performance of the obligations by the Lessee under these presents so far as the same relate to the execution and completion in manner hereinbefore mentioned of the works specified in the agreed Schedule of Dilapidations annexed hereto and such sum shall be invested in a British Government security

II. Upon the said works or any of them being executed in manner aforesaid (either by the Lessee or the Lessor) a sum equal to the actual cost of the execution of such works shall be raised out of the said invested sum (so far as the same extends) and be paid to the Lessee or the Lessor (as the case may require)

III. Upon the Lessor or such surveyor as aforesaid certifying in writing that the whole of the works specified in the said schedule have been duly executed in manner aforesaid and that no money has been expended by the Lessor in connection with the execution of such works or if expended that the Lessor has received reimbursement in respect thereof then the invested sum (or any remaining balance thereof) shall thereupon be released and paid or transferred to the Lessee

IV. Any interest earned by the said invested sum (or any remaining part thereof) shall belong to the Lessee except in so far as the same may have been applied in discharge of the cost of the said works or any of them.

Lessee's covenant to perform and observe all the covenants of lease to be extended relation to the new demise.

4. (a) THE Lessee for himself and his assigns hereby further covenants and agrees with the Lessor that he the Lessee and his assigns will perform and observe the several covenants (except the covenant for the payment of rent) provisos stipulations and declarations on his part or relating to the Lessee's covenants and obligations contained in the Lease as fully as if the same covenants provisos stipulations and declarations had been herein repeated in full with such modifications as aforesaid and such other modifications as are necessary to make them applicable to this demise

(b) The Lessor so far only as to render himself and his Personal Representatives accountable out of his own real and personal estate for any breach or breaches by or through his own personal acts or defaults or the acts or defaults of persons claiming under him and not by or through the acts or defaults of any of his successors in title hereby covenants with the Lessee that he the Lessor will perform and observe the covenant for quiet enjoyment on his part contained in the Lease as fully as if the same were repeated herein with such modifications only as are necessary to make it applicable to this demise.

efinition of termination of ostilities" (*f*).

5. IT IS HEREBY AGREED AND DECLARED between the parties hereto:—

(1) That the term "termination of hostilities" in this Lease shall mean the date when all actual physical hostilities on the part of the armed forces of the belligerent parties in connection with the War have ceased for a continuous period of three calendar months

(2) In this present clause the term "the War" means the war now being waged by His Majesty the King including his Allies from time to time against Germany [Italy] [Japan] ([and] [but not including] their Allies from time to time)

(3) No provision in any Statute Order rule or regulation shall affect the interpretation of this clause

(4) A letter from the Foreign Office or the War Office stating either the precise or approximate date when all actual physical hostilities as aforesaid shall have ceased shall in case of doubt be accepted by both parties as sufficient evidence of such date and although stated to be approximate only shall nevertheless be treated as being the true and actual date when all such actual physical hostilities as aforesaid shall have ceased And further a letter from either of such offices as aforesaid that the cessation of actual physical hostilities has been continuous for a period of three calendar months shall also in case of doubt be accepted by both parties as sufficient evidence.

IN WITNESS *etc.*

N.B.—Agreed Schedule if dilapidations to be annexed.

Form 31.

Conveyance of Freeholds by the Special Personal Representatives of a Deceased Tenant for Life (*a*).

arties.

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN —— of —— and —— of —— (hereinafter called "the Vendors") of the one part and —— of —— (hereinafter called "the Purchaser") of the other part.

ecitals:

WHEREAS:—

eisin;

(1) The Vendors are seised of the property hereinafter described and expressed to be hereby conveyed for a legal estate in fee simple absolute in possession free from encumbrances

(*f*) The point whether the expression "the War" should extend to include Italy and/or Japan must be considered in each case. It is obviously not possible to lay down any general guiding rule or indication, but it is felt that the present general outlook is to regard "the War" as being primarily and mainly the European War against Germany.

(*a*) Stamp: *ad valorem.*

This precedent was drafted by Mr. G. H. Wigglesworth, M.A., B.C.L.

It is assumed that there are two or more Special Personal Representatives, but a single Special Personal Representative could sell and give a good receipt for the purchase money.

The Purchaser may assume that the Special Personal Representatives are acting under their statutory powers and that any money paid to them is required for purposes of administration: Settled Land Act, 1925, s. 110 (3).

(2) The Vendors are the Special Personal Representatives of —— late of *etc.* who died on the —— day of —— 19— and probate of whose will dated the —— day of —— limited to settled land was granted to the Vendors on the —— day of —— 19— out of the —— Probate Registry — Vendors are Special Personal Representatives;

(3) The Vendors hold the said property as such Special Personal Representatives as aforesaid the said property having been comprised in the said grant of probate limited to settled land. — Vendors hold property as such;

(4) The Vendors in exercise of the powers conferred upon them by section 24 of the Administration of Estates Act 1925 and of all other powers them hereunto enabling have agreed with the Purchaser for the absolute sale to the Purchaser of the said property and the legal estate in fee simple absolute in possession therein free from encumbrances for the sum of £—— — contract for sale;

(5) The Vendors have not given or made any assent or conveyance in respect of the legal estate in the said property or any part thereof. — no previous assent.

NOW THIS CONVEYANCE made in pursuance of the said agreement and in consideration of the sum of £—— paid by the Purchaser to the Vendors as such Personal Representatives as aforesaid (the receipt whereof the Vendors hereby acknowledge) WITNESSETH as follows:— — Testatum: consideration.

1. THE Vendors as Personal Representatives of the said —— by virtue of the powers vested in them by section 24 of the Administration of Estates Act 1925 and of every or any other power enabling them in this behalf hereby convey unto the Purchaser ALL *etc.* TO HOLD the same unto the Purchaser in fee simple. — Conveyance

2. THE Vendors hereby acknowledge the right of the Purchaser to the production of the documents specified in the Schedule hereto (the possession whereof is retained by the Vendors) and to delivery of copies thereof. — Acknowledgment of documents.

3. [*Certificate as to value, if appropriate.*] — Certificate of value.

IN WITNESS *etc.*

THE SCHEDULE ABOVE REFERRED TO.

[*Particulars of documents, including the probate limited to settled land* (*b*).]

(*b*) Notice of this Conveyance should be endorsed on or annexed to the grant of probate limited to settled land: Administration of Estates Act, 1925, s. 36 (5).

Form 32.

Clause in a Will Giving a Legacy to be Held Upon Trust to Purchase an Annuity (*a*).

Drafted by A. H. Withers, Esq., of Lincoln's Inn.

In respect of each (taken separately) of my sisters A B and C who survive me I provide as follows:—

(A) I GIVE to my trustees free (*b*) of duties payable on my death (1) the sum of £500 upon trust to invest the same during the life of such sister in the purchase from the Government or some British insurance company of an annuity for the life of such sister and (*c*) (2) the weekly sum of £1 to commence from my death and to cease on the day on which such sister dies or the day of the commencement of the purchased annuity on her life whichever day comes first and to be payable in lieu of interest pending the purchase of the said annuity

(B) (*d*) MY TRUSTEES shall hold such annuity and such weekly sum on protective trusts for the benefit of such sister for the period of her life

(C) SUCH annuity shall be purchased as soon as possible after my death and shall commence from some day not being more than one month before or after the date of the purchase thereof and shall be payable monthly or otherwise as such sister may consent to

(D) So much of the said sum of £500 as shall not actually be so invested during the life of such sister shall be held on the same trusts as if such sister had died in my lifetime.

(*a*) Not infrequently a testator gives to his executors power to purchase an annuity. It may, however, be in the interests of the estate that an annuity shall be purchased. This form makes the purchase obligatory.

(*b*) Legacy duty will be payable on the £500 at the rate applicable by reason of the degree of consanguinity, if any, subsisting between the testator and annuitant. In the event of the life interest of the annuitant determining by reason of any forfeiture and payments being made under the protective trusts to other persons, should such persons be liable to duty at the higher rate such higher duty will then become payable: Legacy Duty Act, 1796, s. 17.

(*c*) This is necessary as it may not be possible to complete the administration and purchase the annuity for some time.

(*d*) This clause prevents the annuitant claiming payment over of the capital of the annuity.

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